101st Congress 2d Session | HOUSE OF REPRESENTATIVES | Report 101-558

AMERICANS WITH DISABILITIES ACT OF 1990

June 26, 1990.—Ordered to be printed

Mr. Hawkins, from the committee of conference, submitted the following

[To accompany S. 933]

Conference Report (H. Rept 101-558)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Americans with Disabilities Act of 1990".

(b) Table of Contents.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.

TITLE I—EMPLOYMENT

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Washington, DC 20402

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Sec. 511. Definitions.
Sec. 512. Amendments to the Rehabilitation Act.
Sec. 513. Alternative means of dispute resolution.
Sec. 514. Severability.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) PURPOSE.—It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) DISABILITY.—The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) COMMISSION.—The term "Commission" means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(2) COVERED ENTITY.—The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) DIRECT THREAT.—The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) EMPLOYEE.—The term "employee" means an individual employed by an employer.

(5) EMPLOYER.—

(A) IN GENERAL.—The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this title, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) EXCEPTIONS.—The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(6) ILLEGAL USE OF DRUGS.—

(A) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

(7) PERSON, ETC.—The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(8) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) REASONABLE ACCOMMODATION.—The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or

modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) UNDUE HARDSHIP.—

(A) IN GENERAL.—The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) FACTORS TO BE CONSIDERED.—In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this Act;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this title (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) MEDICAL EXAMINATIONS AND INQUIRIES.—

(1) IN GENERAL.—The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) PREEMPLOYMENT.—

(A) PROHIBITED EXAMINATION OR INQUIRY.—Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) ACCEPTABLE INQUIRY.—A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) EMPLOYMENT ENTRANCE EXAMINATION.—A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and

may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this Act shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this title.

(4) EXAMINATION AND INQUIRY.—

(A) PROHIBITED EXAMINATIONS AND INQUIRIES.—A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) ACCEPTABLE EXAMINATIONS AND INQUIRIES.—A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) REQUIREMENT.—Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

SEC. 103. DEFENSES.

(a) IN GENERAL.—It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this title.

(b) QUALIFICATION STANDARDS.—The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) RELIGIOUS ENTITIES.—

(1) IN GENERAL.—This title shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular

religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) RELIGIOUS TENETS REQUIREMENT.—Under this title, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

SEC. 104. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) QUALIFIED INDIVIDUAL WITH A DISABILITY.—For purposes of this title, the term "qualified individual with a disability" shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) AUTHORITY OF COVERED ENTITY.—A covered entity—

(1) may prohibit the illegal use of drugs and the use alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) DRUG TESTING.—

(1) IN GENERAL.—For purposes of this title, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) CONSTRUCTION.—Nothing in this title shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) TRANSPORTATION EMPLOYEES.—Nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c).

SEC. 105. POSTING NOTICES.

Every employer, employment agency, labor organization, or joint labor-management committee covered under this title shall post notices in an accessible format to applicants, employees, and members describing the applicable provisions of this Act, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

SEC. 106. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

SEC. 107. ENFORCEMENT.

(a) POWERS, REMEDIES, AND PROCEDURES.—The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of

the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106, concerning employment.

(b) COORDINATION.—The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act.

SEC. 108. EFFECTIVE DATE.

This title shall become effective 24 months after the date of enactment.

TITLE II—PUBLIC SERVICES

Subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions

SEC. 201. DEFINITION.

As used in this title:

(1) PUBLIC ENTITY.—The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

(2) QUALIFIED INDIVIDUAL WITH A DISABILITY.—The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

SEC. 202. DISCRIMINATION.

Subject to the provisions of this title, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

SEC. 203. ENFORCEMENT.

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

SEC. 204. REGULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244.

(b) RELATIONSHIP TO OTHER REGULATIONS.—Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) STANDARDS.—Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act.

SEC. 205. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this subtitle shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Section 204 shall become effective on the date of enactment of this Act.

Subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory

PART I—PUBLIC TRANSPORTATION OTHER THAN BY AIRCRAFT OR CERTAIN RAIL OPERATIONS

SEC. 221. DEFINITIONS.

As used in this part:

(1) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing designated public transportation which is not a fixed route system.

(2) DESIGNATED PUBLIC TRANSPORTATION.—The term "designated public transportation" means transportation (other than public school transportation) by bus, rail, or any other conveyance (other than transportation by aircraft or intercity or commuter rail transportation (as defined in section 241)) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(3) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing designated public transportation on which a vehicle is operated along a prescribed route according to a fixed schedule.

(4) OPERATES.—The term "operates", as used with respect to a fixed route system or demand responsive system, includes operation of such system by a person under a contractual or other arrangement or relationship with a public entity.

(5) PUBLIC SCHOOL TRANSPORTATION.—The term "public school transportation" means transportation by schoolbus vehicles of schoolchildren, personnel, and equipment to and from a public elementary or secondary school and school-related activities.

(6) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

SEC. 222. PUBLIC ENTITIES OPERATING FIXED ROUTE SYSTEMS.

(a) PURCHASE AND LEASE OF NEW VEHICLES.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease a new bus, a new rapid rail vehicle, a new light rail vehicle, or any other new vehicle to be used on such system, if the solicitation for such purchase or lease is made after the 30th day following the effective date of this subsection and if such bus, rail vehicle, or other vehicle is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) PURCHASE AND LEASE OF USED VEHICLES.—Subject to subsection (c)(1), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system to purchase or lease, after the 30th day following the effective date of this subsection, a used vehicle for use on such system unless such entity makes demonstrated good faith efforts to purchase or lease a used vehicle for use on such system that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) REMANUFACTURED VEHICLES.—

(1) GENERAL RULE.—Except as provided in paragraph (2), it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system—

(A) to remanufacture a vehicle for use on such system so as to extend its usable life for 5 years or more, which remanufacture begins (or for which the solicitation is made) after the 30th day following the effective date of this subsection; or

(B) to purchase or lease for use on such system a remanufactured vehicle which has been remanufactured so as to extend its usable life for 5 years or more, which purchase or lease occurs after such 30th day and during the period in which the usable life is extended;

unless, after remanufacture, the vehicle is, to the maximum extent feasible, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) EXCEPTION FOR HISTORIC VEHICLES.—

(A) GENERAL RULE.—If a public entity operates a fixed route system any segment of which is included on the National Register of Historic Places and if making a vehicle of historic character to be used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of paragraph (1) and which do not significantly alter the historic character of such vehicle.

(B) VEHICLES OF HISTORIC CHARACTER DEFINED BY REGULATIONS.—For purposes of this paragraph and section 228(b), a vehicle of historic character shall be defined by the regulations issued by the Secretary to carry out this subsection.

SEC. 223. PARATRANSIT AS A COMPLEMENT TO FIXED ROUTE SERVICE.

(a) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a public entity which operates a fixed route system (other than a system which provides solely commuter bus service) to fail to provide with respect to the operations of its fixed route system, in accordance with this section, paratransit and other special transportation services to individuals with disabilities, including individuals who use wheelchairs, that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

(b) ISSUANCE OF REGULATIONS.—Not later than 1 year after the effective date of this subsection, the Secretary shall issue final regulations to carry out this section.

(c) REQUIRED CONTENTS OF REGULATIONS.—

(1) ELIGIBLE RECIPIENTS OF SERVICE.—The regulations issued under this section shall require each public entity which operates a fixed route system to provide the paratransit and other special transportation services required under this section—

(A)(i) to any individual with a disability who is unable, as a result of a physical or mental impairment (including a vision impairment) and without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device), to board, ride, or disembark from any vehicle on the system which is readily accessible to and usable by individuals with disabilities;

(ii) to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is readily accessible to and usable by individuals with disabilities if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such a vehicle is not being used to provide designated public transportation on the route; and

(iii) to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system;

(B) to 1 other individual accompanying the individual with the disability; and

(C) to other individuals, in addition to the one individual described in subparagraph (B), accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individuals will not result in a denial of service to individuals with disabilities.

For purposes of clauses (i) and (ii) of subparagraph (A), boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

(2) SERVICE AREA.—The regulations issued under this section shall require the provision of paratransit and special transportation services required under this section in the service area of each public entity which operates a fixed route system, other than any portion of the service area in which the public entity solely provides commuter bus service.

(3) SERVICE CRITERIA.—Subject to paragraphs (1) and (2), the regulations issued under this section shall establish minimum service criteria for determining the level of services to be required under this section.

(4) UNDUE FINANCIAL BURDEN LIMITATION.—The regulations issued under this section shall provide that, if the public entity is able to demonstrate to the satisfaction of the Secretary that the provision of paratransit and other special transportation services otherwise required under this section would impose an undue financial burden on the public entity, the public entity, notwithstanding any other provision of this section (other than paragraph (5)), shall only be required to provide such services to the extent that providing such services would not impose such a burden.

(5) ADDITIONAL SERVICES.—The regulations issued under this section shall establish circumstances under which the Secretary may require a public entity to provide, notwithstanding paragraph (4), paratransit and other special transportation services under this section beyond the level of paratransit and other special transportation services which would otherwise be required under paragraph (4).

(6) PUBLIC PARTICIPATION.—The regulations issued under this section shall require that each public entity which operates a fixed route system hold a public hearing, provide an opportunity for public comment, and consult with individuals with disabilities in preparing its plan under paragraph (7).

(7) PLANS.—The regulations issued under this section shall require that each public entity which operates a fixed route system—

(A) within 18 months after the effective date of this subsection, submit to the Secretary, and commence implementation of, a plan for providing paratransit and other special transportation services which meets the requirements of this section; and

(B) on an annual basis thereafter, submit to the Secretary, and commence implementation of, a plan for providing such services.

(8) PROVISION OF SERVICES BY OTHERS.—The regulations issued under this section shall—

(A) require that a public entity submitting a plan to the Secretary under this section identify in the plan any person or other public entity which is providing a paratransit or other special transportation service for individuals with disabilities in the service area to which the plan applies; and

(B) provide that the public entity submitting the plan does not have to provide under the plan such service for individuals with disabilities.

(9) OTHER PROVISIONS.—The regulations issued under this section shall include such other provisions and requirements as the Secretary determines are necessary to carry out the objectives of this section.

(d) REVIEW OF PLAN.—

(1) GENERAL RULE.—The Secretary shall review a plan submitted under this section for the purpose of determining whether or not such plan meets the requirements of this section, including the regulations issued under this section.

(2) DISAPPROVAL.—If the Secretary determines that a plan reviewed under this subsection fails to meet the requirements of this section, the Secretary shall disapprove the plan and notify the public entity which submitted the plan of such disapproval and the reasons therefor.

(3) MODIFICATION OF DISAPPROVED PLAN.—Not later than 90 days after the date of disapproval of a plan under this subsection, the public entity which submitted the plan shall modify the plan to meet the requirements of this section and shall submit to the Secretary, and commence implementation of, such modified plan.

(e) DISCRIMINATION DEFINED.—As used in subsection (a), the term "discrimination" includes—

(1) a failure of a public entity to which the regulations issued under this section apply to submit, or commence implementation of, a plan in accordance with subsections (c)(6) and (c)(7);

(2) a failure of such entity to submit, or commence implementation of, a modified plan in accordance with subsection (d)(3);

(3) submission to the Secretary of a modified plan under subsection (d)(3) which does not meet the requirements of this section; or

(4) a failure of such entity to provide paratransit or other special transportation services in accordance with the plan or modified plan the public entity submitted to the Secretary under this section.

(f) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as preventing a public entity—

(1) from providing paratransit or other special transportation services at a level which is greater than the level of such services which are required by this section,

(2) from providing paratransit or other special transportation services in addition to those paratransit and special transportation services required by this section, or

(3) from providing such services to individuals in addition to those individuals to whom such services are required to be provided by this section.

SEC. 224. PUBLIC ENTITY OPERATING A DEMAND RESPONSIVE SYSTEM.

If a public entity operates a demand responsive system, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for such entity to purchase or lease a new vehicle for use on such system, for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities.

SEC. 225. TEMPORARY RELIEF WHERE LIFTS ARE UNAVAILABLE.

(a) GRANTING.—With respect to the purchase of new buses, a public entity may apply for, and the Secretary may temporarily relieve such public entity from the obligation under section 222(a) or 224 to purchase new buses that are readily accessible to and usable by individuals with disabilities if such public entity demonstrates to the satisfaction of the Secretary—

(1) that the initial solicitation for new buses made by the public entity specified that all new buses were to be lift-equipped and were to be otherwise accessible to and usable by individuals with disabilities;

(2) the unavailability from any qualified manufacturer of hydraulic, electromechanical, or other lifts for such new buses;

(3) that the public entity seeking temporary relief has made good faith efforts to locate a qualified manufacturer to supply the lifts to the manufacturer of such buses in sufficient time to comply with such solicitation; and

(4) that any further delay in purchasing new buses necessary to obtain such lifts would significantly impair transportation services in the community served by the public entity.

(b) DURATION AND NOTICE TO CONGRESS.—Any relief granted under subsection (a) shall be limited in duration by a specified date, and the appropriate committees of Congress shall be notified of any such relief granted.

(c) FRAUDULENT APPLICATION.—If, at any time, the Secretary has reasonable cause to believe that any relief granted under subsection (a) was fraudulently applied for, the Secretary shall—

(1) cancel such relief if such relief is still in effect; and

(2) take such other action as the Secretary considers appropriate.

SEC. 226. NEW FACILITIES.

For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to construct a new facility to be used in the provision of designated public transportation services unless such facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

SEC. 227. ALTERATIONS OF EXISTING FACILITIES.

(a) GENERAL RULE.—With respect to alterations of an existing facility or part thereof used in the provision of designated public transportation services that affect or could affect the usability of the facility or part thereof, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to make such alterations (or to ensure that the alterations are made) in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations. Where the public entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) SPECIAL RULE FOR STATIONS.—

(1) GENERAL RULE.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity that provides designated public transportation to fail, in accordance with the provisions of this subsection, to make key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems readily acces-

sible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(2) RAPID RAIL AND LIGHT RAIL KEY STATIONS.—

(A) ACCESSIBILITY.—Except as otherwise provided in this paragraph, all key stations (as determined under criteria established by the Secretary by regulation) in rapid rail and light rail systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 3-year period beginning on the effective date of this paragraph.

(B) EXTENSION FOR EXTRAORDINARILY EXPENSIVE STRUCTURAL CHANGES.—The Secretary may extend the 3-year period under subparagraph (A) up to a 30-year period for key stations in a rapid rail or light rail system which stations need extraordinarily expensive structural changes to, or replacement of, existing facilities; except that by the last day of the 20th year following the date of the enactment of this Act at least ⅔ of such key stations must be readily accessible to and usable by individuals with disabilities.

(3) PLANS AND MILESTONES.—The Secretary shall require the appropriate public entity to develop and submit to the Secretary a plan for compliance with this subsection—

(A) that reflects consultation with individuals with disabilities affected by such plan and the results of a public hearing and public comments on such plan, and

(B) that establishes milestones for achievement of the requirements of this subsection.

SEC. 228. PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES AND ONE CAR PER TRAIN RULE.

(a) PUBLIC TRANSPORTATION PROGRAMS AND ACTIVITIES IN EXISTING FACILITIES.—

(1) IN GENERAL.—With respect to existing facilities used in the provision of designated public transportation services, it shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities.

(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) or section 227(b) (relating to key stations).

(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchairs services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities.

(b) ONE CAR PER TRAIN RULE.—

(1) GENERAL RULE.—Subject to paragraph (2), with respect to 2 or more vehicles operated as a train by a light or rapid rail system, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), it shall be considered discrimination for a public entity to fail to have at least 1 vehicle per train that is accessible to individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than the last day of the 5-year period beginning on the effective date of this section.

(2) HISTORIC TRAINS.—In order to comply with paragraph (1) with respect to the remanufacture of a vehicle of historic character which is to be used on a segment of a light or rapid rail system which is included on the National Register of Historic Places, if making such vehicle readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity which operates such system only has to make (or to purchase or lease a remanufactured vehicle with) those modifications which are necessary to meet the requirements of section 222(c)(1) and which do not significantly alter the historic character of such vehicle.

SEC. 229. REGULATIONS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part (other than section 223).

(b) STANDARDS.—The regulations issued under this section and section 223 shall include standards applicable to facilities and vehicles covered by this subtitle. The standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

SEC. 230. INTERIM ACCESSIBILITY REQUIREMENTS.

If final regulations have not been issued pursuant to section 229, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under sections 226 and 227, except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

SEC. 231. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 222, 223 (other than subsection (a)), 224, 225, 227(b), 228(b), and 229 shall become effective on the date of enactment of this Act.

PART II—PUBLIC TRANSPORTATION BY INTERCITY AND COMMUTER RAIL

SEC. 241. DEFINITIONS.

As used in this part:

(1) COMMUTER AUTHORITY.—The term "commuter authority" has the meaning given such term in section 103(8) of the Rail Passenger Service Act (45 U.S.C 502(8)).

(2) COMMUTER RAIL TRANSPORTATION.—The term "commuter rail transportation" has the meaning given the term "commuter service" in section 103(9) of the Rail Passenger Service Act (45 U.S.C 502(9)).

(3) INTERCITY RAIL TRANSPORTATION.—The term "intercity rail transportation" means transportation provided by the National Railroad Passenger Corporation.

(4) RAIL PASSENGER CAR.—The term "rail passenger car" means, with respect to intercity rail transportation, single-level and bi-level coach cars, single-level and bi-level dining cars, single-level and bi-level sleeping cars, single-level and bi-level lounge cars, and food service cars.

(5) RESPONSIBLE PERSON.—The term "responsible person" means—

(A) in the case of a station more than 50 percent of which is owned by a public entity, such public entity;

(B) in the case of a station more than 50 percent of which is owned by a private party, the persons providing intercity or commuter rail transportation to such station, as allocated on an equitable basis by regulation by the Secretary of Transportation; and

(C) in a case where no party owns more than 50 percent of a station, the persons providing intercity or commuter rail transportation to such station and the owners of the station, other than private party owners, as allocated on an equitable basis by regulation by the Secretary of Transportation.

(6) STATION.—The term "station" means the portion of a property located appurtenant to a right-of-way on which intercity or commuter rail transportation is operated, where such portion is used by the general public and is related to the provision of such transportation, including passenger platforms, designated waiting areas, ticketing areas, restrooms, and, where a public entity providing rail transportation owns the property, concession areas, to the extent that such public entity exercises control over the selection, design, construction, or alteration of the property, but such term does not include flag stops.

SEC. 242. INTERCITY AND COMMUTER RAIL ACTIONS CONSIDERED DISCRIMINATORY.

(a) INTERCITY RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW INTERCITY CARS.—

(A) GENERAL RULE.—Except as otherwise provided in this subsection with respect to individuals who use wheelchairs, it shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease any new rail passenger cars for use in intercity rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) SPECIAL RULE FOR SINGLE-LEVEL PASSENGER COACHES FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level passenger coaches shall be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, and a space to fold and store such passenger's wheelchair; and

(iv) have a restroom usable by an individual who uses a wheelchair,

only to the extent provided in paragraph (3).

(C) SPECIAL RULE FOR SINGLE-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Single-level dining cars shall not be required to—

(i) be able to be entered from the station platform by an individual who uses a wheelchair; or

(ii) have a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger.

(D) SPECIAL RULE FOR BI-LEVEL DINING CARS FOR INDIVIDUALS WHO USE WHEELCHAIRS.—Bi-level dining cars shall not be required to—

(i) be able to be entered by an individual who uses a wheelchair;

(ii) have space to park and secure a wheelchair;

(iii) have a seat to which a passenger in a wheelchair can transfer, or a space to fold and store such passenger's wheelchair; or

(iv) have a restroom usable by an individual who uses a wheelchair.

(3) ACCESSIBILITY OF SINGLE-LEVEL COACHES.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides intercity rail transportation to fail to have on each train which includes one or more single-level rail passenger coaches—

(i) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than one-half of the number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than one-half of the number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 5 years after the date of enactment of this Act; and

(ii) a number of spaces—

(I) to park and secure wheelchairs (to accommodate individuals who wish to remain in their wheelchairs) equal to not less than the total number of single-level rail passenger coaches in such train; and

(II) to fold and store wheelchairs (to accommodate individuals who wish to transfer to coach seats) equal to not less than the total number of single-level rail passenger coaches in such train,

as soon as practicable, but in no event later than 10 years after the date of enactment of this Act.

(B) LOCATION.—Spaces required by subparagraph (A) shall be located in single-level rail passenger coaches or food service cars.

(C) LIMITATION.—Of the number of spaces required on a train by subparagraph (A), not more than two spaces to park and secure wheelchairs nor more than two spaces to fold and store wheelchairs shall be located in any one coach or food service car.

(D) OTHER ACCESSIBILITY FEATURES.—Single-level rail passenger coaches and food service cars on which the spaces required by subparagraph (A) are located shall have a restroom usable by an individual who uses a wheelchair and shall be able to be entered from the station platform by an individual who uses a wheelchair.

(4) FOOD SERVICE.—

(A) SINGLE-LEVEL DINING CARS.—On any train in which a single-level dining car is used to provide food service—

(i) if such single-level dining car was purchased after the date of enactment of this Act, table service in such

car shall be provided to a passenger who uses a wheelchair if—

(I) the car adjacent to the end of the dining car through which a wheelchair may enter is itself accessible to a wheelchair;

(II) such passenger can exit to the platform from the car such passenger occupies, move down the platform, and enter the adjacent accessible car described in subclause (I) without the necessity of the train being moved within the station; and

(III) space to park and secure a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to remain in a wheelchair), or space to store and fold a wheelchair is available in the dining car at the time such passenger wishes to eat (if such passenger wishes to transfer to a dining car seat); and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

Unless not practicable, a person providing intercity rail transportation shall place an accessible car adjacent to the end of a dining car described in clause (i) through which an individual who uses a wheelchair may enter.

(B) BI-LEVEL DINING CARS.—On any train in which a bi-level dining car is used to provide food service—

(i) if such train includes a bi-level lounge car purchased after the date of enactment of this Act, table service in such lounge car shall be provided to individuals who use wheelchairs and to other passengers; and

(ii) appropriate auxiliary aids and services, including a hard surface on which to eat, shall be provided to ensure that other equivalent food service is available to individuals with disabilities, including individuals who use wheelchairs, and to passengers traveling with such individuals.

(b) COMMUTER RAIL TRANSPORTATION.—

(1) ONE CAR PER TRAIN RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person who provides commuter rail transportation to fail to have at least one passenger car per train that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, in accordance with regulations issued under section 244, as soon as practicable, but in no event later than 5 years after the date of enactment of this Act.

(2) NEW COMMUTER RAIL CARS.—

(A) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a

person to purchase or lease any new rail passenger cars for use in commuter rail transportation, and for which a solicitation is made later than 30 days after the effective date of this section, unless all such rail cars are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(B) ACCESSIBILITY.—For purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), a requirement that a rail passenger car used in commuter rail transportation be accessible to or readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, shall not be construed to require—

(i) a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger;

(ii) space to fold and store a wheelchair; or

(iii) a seat to which a passenger who uses a wheelchair can transfer.

(c) USED RAIL CARS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a used rail passenger car for use in intercity or commuter rail transportation, unless such person makes demonstrated good faith efforts to purchase or lease a used rail car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(d) REMANUFACTURED RAIL CARS.—

(1) REMANUFACTURING.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to remanufacture a rail passenger car for use in intercity or commuter rail transportation so as to extend its usable life for 10 years or more, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(2) PURCHASE OR LEASE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to purchase or lease a remanufactured rail passenger car for use in intercity or commuter rail transportation unless such car was remanufactured in accordance with paragraph (1).

(e) STATIONS.—

(1) NEW STATIONS.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a person to build a new station for use in intercity or commuter rail transportation that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as pre-

scribed by the Secretary of Transportation in regulations issued under section 244.

(2) EXISTING STATIONS.—

(A) FAILURE TO MAKE READILY ACCESSIBLE.—

(i) GENERAL RULE.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for a responsible person to fail to make existing stations in the intercity rail transportation system, and existing key stations in commuter rail transportation systems, readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as prescribed by the Secretary of Transportation in regulations issued under section 244.

(ii) PERIOD FOR COMPLIANCE.—

(I) INTERCITY RAIL.—All stations in the intercity rail transportation system shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable, but in no event later than 20 years after the date of enactment of this Act.

(II) COMMUTER RAIL.—Key stations in commuter rail transportation systems shall be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no event later than 3 years after the date of enactment of this Act, except that the time limit may be extended by the Secretary of Transportation up to 20 years after the date of enactment of this Act in a case where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

(iii) DESIGNATION OF KEY STATIONS.—Each commuter authority shall designate the key stations in its commuter rail transportation system, in consultation with individuals with disabilities and organizations representing such individuals, taking into consideration such factors as high ridership and whether such station serves as a transfer or feeder station. Before the final designation of key stations under this clause, a commuter authority shall hold a public hearing.

(iv) PLANS AND MILESTONES.—The Secretary of Transportation shall require the appropriate person to develop a plan for carrying out this subparagraph that reflects consultation with individuals with disabilities affected by such plan and that establishes milestones for achievement of the requirements of this subparagraph.

(B) REQUIREMENT WHEN MAKING ALTERATIONS.—

(i) GENERAL RULE.—It shall be considered discrimination, for purposes of section 202 of this Act and sec-

tion 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations of an existing station or part thereof in the intercity or commuter rail transportation systems that affect or could affect the usability of the station or part thereof, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the altered portions of the station are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations.

(ii) ALTERATIONS TO A PRIMARY FUNCTION AREA.—It shall be considered discrimination, for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), with respect to alterations that affect or could affect the usability of or access to an area of the station containing a primary function, for the responsible person, owner, or person in control of the station to fail to make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of such alterations, where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(C) REQUIRED COOPERATION.—It shall be considered discrimination for purposes of section 202 of this Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for an owner, or person in control, of a station governed by subparagraph (A) or (B) to fail to provide reasonable cooperation to a responsible person with respect to such station in that responsible person's efforts to comply with such subparagraph. An owner, or person in control, of a station shall be liable to a responsible person for any failure to provide reasonable cooperation as required by this subparagraph. Failure to receive reasonable cooperation required by this subparagraph shall not be a defense to a claim of discrimination under this Act.

SEC. 243. CONFORMANCE OF ACCESSIBILITY STANDARDS.

Accessibility standards included in regulations issued under this part shall be consistent with the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board under section 504(a) of this Act.

SEC. 244. REGULATIONS.

Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this part.

SEC. 245. INTERIM ACCESSIBILITY REQUIREMENTS.

(a) STATIONS.—If final regulations have not been issued pursuant to section 244, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under such section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities as required under section 242(e), except that, if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that stations be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(b) RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to section 244, a person shall be considered to have complied with the requirements of section 242(a) through (d) that a rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such cars, to the extent that such laws and regulations are not inconsistent with this part and are in effect at the time such design is substantially completed.

SEC. 246. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsection (b), this part shall become effective 18 months after the date of enactment of this Act.

(b) EXCEPTION.—Sections 242 and 244 shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

SEC. 301. DEFINITIONS.

As used in this title:

(1) COMMERCE.—The term "commerce" means travel, trade, traffic, commerce, transportation, or communication—

(A) among the several States;

(B) between any foreign country or any territory or possession and any State; or

(C) between points in the same State but through another State or foreign country.

(2) COMMERCIAL FACILITIES.—The term "commercial facilities" means facilities—

(A) that are intended for nonresidential use; and

(B) whose operations will affect commerce.

Such term shall not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 242 or covered under this title, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968 (42 U.S.C. 3601 et seq.).

(3) DEMAND RESPONSIVE SYSTEM.—The term "demand responsive system" means any system of providing transportation of individuals by a vehicle, other than a system which is a fixed route system.

(4) FIXED ROUTE SYSTEM.—The term "fixed route system" means a system of providing transportation of individuals (other than by aircraft) on which a vehicle is operated along a prescribed route according to a fixed schedule.

(5) OVER-THE-ROAD BUS.—The term "over-the-road bus" means a bus characterized by an elevated passenger deck located over a baggage compartment.

(6) PRIVATE ENTITY.—The term "private entity" means any entity other than a public entity (as defined in section 201(1)).

(7) PUBLIC ACCOMMODATION.—The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce—

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

(8) RAIL AND RAILROAD.—The terms "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

(9) READILY ACHIEVABLE.—The term "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include—

(A) the nature and cost of the action needed under this Act;

(B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;

(C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

(10) SPECIFIED PUBLIC TRANSPORTATION.—The term "specified public transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

(11) VEHICLE.—The term "vehicle" does not include a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under this title.

SEC. 302. PROHIBITION OF DISCRIMINATION BY PUBLIC ACCOMMODATIONS.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

(b) CONSTRUCTION.—

(1) GENERAL PROHIBITION.—

(A) ACTIVITIES.—

(i) DENIAL OF PARTICIPATION.—It shall be discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.

(ii) PARTICIPATION IN UNEQUAL BENEFIT.—It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of

such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.

(iii) SEPARATE BENEFIT.—It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

(iv) INDIVIDUAL OR CLASS OF INDIVIDUALS.— For purposes of clauses (i) through (iii) of this subparagraph, the term "individual or class of individuals" refers to the clients or customers of the covered public accommodation that enters into the contractual, licensing or other arrangement.

(B) INTEGRATED SETTINGS.—Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

(C) OPPORTUNITY TO PARTICIPATE.—Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

(D) ADMINISTRATIVE METHODS.—An individual or entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration—

(i) that have the effect of discriminating on the basis of disability; or

(ii) that perpetuate the discrimination of others who are subject to common administrative control.

(E) ASSOCIATION.—It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(2) SPECIFIC PROHIBITIONS.—

(A) DISCRIMINATION.—For purposes of subsection (a), discrimination includes—

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommo-

dations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

(B) FIXED ROUTE SYSTEM.—

(i) ACCESSIBILITY.—It shall be considered discrimination for a private entity which operates a fixed route system and which is not subject to section 304 to purchase or lease a vehicle with a seating capacity in excess of 16 passengers (including the driver) for use on such system, for which a solicitation is made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(ii) EQUIVALENT SERVICE.—If a private entity which operates a fixed route system and which is not subject to section 304 purchases or leases a vehicle with a seating capacity of 16 passengers or less (including the driver) for use on such system after the effective date of this subparagraph that is not readily accessible to or usable by individuals with disabilities, it shall be con-

sidered discrimination for such entity to fail to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities.

(C) DEMAND RESPONSIVE SYSTEM.—For purposes of subsection (a), discrimination includes—

(i) a failure of a private entity which operates a demand responsive system and which is not subject to section 304 to operate such system so that, when viewed in its entirety, such system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities; and

(ii) the purchase or lease by such entity for use on such system of a vehicle with a seating capacity in excess of 16 passengers (including the driver), for which solicitations are made after the 30th day following the effective date of this subparagraph, that is not readily accessible to and usable by individuals with disabilities (including individuals who use wheelchairs) unless such entity can demonstrate that such system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to that provided to individuals without disabilities.

(D) OVER-THE-ROAD BUSES.—

(i) LIMITATION ON APPLICABILITY.—Subparagraphs (B) and (C) do not apply to over-the-road buses.

(ii) ACCESSIBILITY REQUIREMENTS.—For purposes of subsection (a), discrimination includes (I) the purchase or lease of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2) by a private entity which provides transportation of individuals and which is not primarily engaged in the business of transporting people, and (II) any other failure of such entity to comply with such regulations.

(3) SPECIFIC CONSTRUCTION.—Nothing in this title shall require an entity to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services.

SEC. 303. NEW CONSTRUCTION AND ALTERATIONS IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES.

(a) APPLICATION OF TERM.—Except as provided in subsection (b), as applied to public accommodations and commercial facilities, discrimination for purposes of section 302(a) includes—

(1) a failure to design and construct facilities for first occupancy later than 30 months after the date of enactment of this

Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impracticable to meet the requirements of such subsection in accordance with standards set forth or incorporated by reference in regulations issued under this title; and

(2) with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General).

(b) ELEVATOR.—Subsection (a) shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

SEC. 304. PROHIBITION OF DISCRIMINATION IN SPECIFIED PUBLIC TRANSPORTATION SERVICES PROVIDED BY PRIVATE ENTITIES.

(a) GENERAL RULE.—No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.

(b) CONSTRUCTION.—For purposes of subsection (a), discrimination includes—

(1) the imposition or application by a entity described in subsection (a) of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully enjoying the specified public transportation services provided by the entity, unless such criteria can be shown to be necessary for the provision of the services being offered;

(2) the failure of such entity to—

(A) make reasonable modifications consistent with those required under section 302(b)(2)(A)(ii);

(B) provide auxiliary aids and services consistent with the requirements of section 302(b)(2)(A)(iii); and

(C) remove barriers consistent with the requirements of section 302(b)(2)(A) and with the requirements of section 303(a)(2);

(3) the purchase or lease by such entity of a new vehicle (other than an automobile, a van with a seating capacity of less than 8 passengers, including the driver, or an over-the-road bus) which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; except that the new vehicle need not be readily accessible to and usable by such individuals if the new vehicle is to be used solely in a demand responsive system and if the entity can demonstrate that such system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(4)(A) the purchase or lease by such entity of an over-the-road bus which does not comply with the regulations issued under section 306(a)(2); and

(B) any other failure of such entity to comply with such regulations; and

(5) the purchase or lease by such entity of a new van with a seating capacity of less than 8 passengers, including the driver, which is to be used to provide specified public transportation and for which a solicitation is made after the 30th day following the effective date of this section that is not readily accessible to or usable by individuals with disabilities, including individuals who use wheelchairs; except that the new van need not be readily accessible to and usable by such individuals if the entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service provided to the general public;

(6) the purchase or lease by such entity of a new rail passenger car that is to be used to provide specified public transportation, and for which a solicitation is made later than 30 days after the effective date of this paragraph, that is not readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(7) the remanufacture by such entity of a rail passenger car that is to be used to provide specified public transportation so as to extend its usable life for 10 years or more, or the purchase or lease by such entity of such a rail car, unless the rail car, to the maximum extent feasible, is made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) HISTORICAL OR ANTIQUATED CARS.—

(1) EXCEPTION.—To the extent that compliance with subsection (b)(2)(C) or (b)(7) would significantly alter the historic or antiquated character of a historical or antiquated rail passenger car, or a rail station served exclusively by such cars, or would result in violation of any rule, regulation, standard, or order issued by the Secretary of Transportation under the Feder-

al Railroad Safety Act of 1970, such compliance shall not be required.

(2) DEFINITION.—As used in this subsection, the term "historical or antiquated rail passenger car" means a rail passenger car—

(A) which is not less than 30 years old at the time of its use for transporting individuals;

(B) the manufacturer of which is no longer in the business of manufacturing rail passenger cars; and

(C) which—

(i) has a consequential association with events or persons significant to the past; or

(ii) embodies, or is being restored to embody, the distinctive characteristics of a type of rail passenger car used in the past, or to represent a time period which has passed.

SEC. 305. STUDY.

(a) PURPOSES.—The Office of Technology Assessment shall undertake a study to determine—

(1) the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service; and

(2) the most cost-effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options.

(b) CONTENTS.—The study shall include, at a minimum, an analysis of the following:

(1) The anticipated demand by individuals with disabilities for accessible over-the-road buses and over-the-road bus service.

(2) The degree to which such buses and service, including any service required under sections 304(b)(4) and 306(a)(2), are readily accessible to and usable by individuals with disabilities.

(3) The effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

(4) The cost of providing accessible over-the-road buses and bus service to individuals with disabilities, including consideration of recent technological and cost saving developments in equipment and devices.

(5) Possible design changes in over-the-road buses that could enhance accessibility, including the installation of accessible restrooms which do not result in a loss of seating capacity.

(6) The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of such requirements on such service to rural communities.

(c) ADVISORY COMMITTEE.—In conducting the study required by subsection (a), the Office of Technology Assessment shall establish an advisory committee, which shall consist of—

(1) members selected from among private operators and manufacturers of over-the-road buses;

(2) members selected from among individuals with disabilities, particularly individuals who use wheelchairs, who are potential riders of such buses; and

(3) members selected for their technical expertise on issues included in the study, including manufacturers of boarding assistance equipment and devices.

The number of members selected under each of paragraphs (1) and (2) shall be equal, and the total number of members selected under paragraphs (1) and (2) shall exceed the number of members selected under paragraph (3).

(d) DEADLINE.—The study required by subsection (a), along with recommendations by the Office of Technology Assessment, including any policy options for legislative action, shall be submitted to the President and Congress within 36 months after the date of the enactment of this Act. If the President determines that compliance with the regulations issued pursuant to section 306(a)(2)(B) on or before the applicable deadlines specified in section 306(a)(2)(B) will result in a significant reduction in intercity over-the-road bus service, the President shall extend each such deadline by 1 year.

(e) REVIEW.—In developing the study required by subsection (a), the Office of Technology Assessment shall provide a preliminary draft of such study to the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792). The Board shall have an opportunity to comment on such draft study, and any such comments by the Board made in writing within 120 days after the Board's receipt of the draft study shall be incorporated as part of the final study required to be submitted under subsection (d).

SEC. 306. REGULATIONS.

(a) TRANSPORTATION PROVISIONS.—

(1) GENERAL RULE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 302(b)(2) (B) and (C) and to carry out section 304 (other than subsection (b)(4)).

(2) SPECIAL RULES FOR PROVIDING ACCESS TO OVER-THE-ROAD BUSES.—

(A) INTERIM REQUIREMENTS—

(i) ISSUANCE.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations in an accessible format to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require each private entity which uses an over-the-road bus to provide transportation of individuals to provide accessibility to such bus; except that such regulations shall not require any structural changes in over-the-road buses in order to provide access to individuals who use wheelchairs during the effective period of such regulations and shall not require the purchase of boarding assistance devices to provide access to such individuals.

(ii) EFFECTIVE PERIOD.—The regulations issued pursuant to this subparagraph shall be effective until the effective date of the regulations issued under subparagraph (B).

(B) FINAL REQUIREMENT.—

(i) REVIEW OF STUDY AND INTERIM REQUIREMENTS.—The Secretary shall review the study submitted under section 305 and the regulations issued pursuant to subparagraph (A).

(ii) ISSUANCE.—Not later than 1 year after the date of the submission of the study under section 305, the Secretary shall issue in an accessible format new regulations to carry out sections 304(b)(4) and 302(b)(2)(D)(ii) that require, taking into account the purposes of the study under section 305 and any recommendations resulting from such study, each private entity which uses an over-the-road bus to provide transportation to individuals to provide accessibility to such bus to individuals with disabilities, including individuals who use wheelchairs.

(iii) EFFECTIVE PERIOD.—Subject to section 305(d), the regulations issued pursuant to this subparagraph shall take effect—

(I) with respect to small providers of transportation (as defined by the Secretary), 7 years after the date of the enactment of this Act; and

(II) with respect to other providers of transportation, 6 years after such date of enactment.

(C) LIMITATION ON REQUIRING INSTALLATION OF ACCESSIBLE RESTROOMS.—The regulations issued pursuant to this paragraph shall not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

(3) STANDARDS.—The regulations issued pursuant to this subsection shall include standards applicable to facilities and vehicles covered by sections 302(b)(2) and 304.

(b) OTHER PROVISIONS.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall issue regulations in an accessible format to carry out the provisions of this title not referred to in subsection (a) that include standards applicable to facilities and vehicles covered under section 302.

(c) CONSISTENCY WITH ATBCB GUIDELINES.—Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504 of this Act.

(d) INTERIM ACCESSIBILITY STANDARDS.—

(1) FACILITIES.—If final regulations have not been issued pursuant to this section, for new construction or alterations for which a valid and appropriate State or local building permit is obtained prior to the issuance of final regulations under this section, and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities as required under section 303, except that, if such final regulations have not been issued

one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines required under section 504(a) of this Act, compliance with such supplemental minimum guidelines shall be necessary to satisfy the requirement that facilities be readily accessible to and usable by persons with disabilities prior to issuance of the final regulations.

(2) VEHICLES AND RAIL PASSENGER CARS.—If final regulations have not been issued pursuant to this section, a private entity shall be considered to have complied with the requirements of this title, if any, that a vehicle or rail passenger car be readily accessible to and usable by individuals with disabilities, if the design for such vehicle or car complies with the laws and regulations (including the Minimum Guidelines and Requirements for Accessible Design and such supplemental minimum guidelines as are issued under section 504(a) of this Act) governing accessibility of such vehicles or cars, to the extent that such laws and regulations are not inconsistent with this title and are in effect at the time such design is substantially completed.

SEC. 307. EXEMPTIONS FOR PRIVATE CLUBS AND RELIGIOUS ORGANIZATIONS.

The provisions of this title shall not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000–a(e)) or to religious organizations or entities controlled by religious organizations, including places of worship.

SEC. 308. ENFORCEMENT.

(a) IN GENERAL.—

(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

(2) INJUNCTIVE RELIEF.—In the case of violations of sections 302(b)(2)(A)(iv) and section 303(a), injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

(b) ENFORCEMENT BY THE ATTORNEY GENERAL.—

(1) DENIAL OF RIGHTS.—

(A) DUTY TO INVESTIGATE.—

(i) IN GENERAL.—The Attorney General shall investigate alleged violations of this title, and shall under-

take periodic reviews of compliance of covered entities under this title.

(ii) ATTORNEY GENERAL CERTIFICATION.—On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) POTENTIAL VIOLATION.—If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title; or

(ii) any person or group of persons has been discriminated against under this title and such discrimination raises an issue of general public importance,

the Attorney General may commence a civil action in any appropriate United States district court.

(2) AUTHORITY OF COURT.—In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) SINGLE VIOLATION.—For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) PUNITIVE DAMAGES.—For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) JUDICIAL CONSIDERATION.—In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

SEC. 309. EXAMINATIONS AND COURSES.

Any person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

SEC. 310. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as provided in subsections (b) and (c), this title shall become effective 18 months after the date of the enactment of this Act.

(b) CIVIL ACTIONS.—Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—

(1) during the first 6 months after the effective date, against businesses that employ 25 or fewer employees and have gross receipts of $1,000,000 or less; and

(2) during the first year after the effective date, against businesses that employ 10 or fewer employees and have gross receipts of $500,000 or less.

(c) EXCEPTION.—Sections 302(a) for purposes of section 302(b)(2)(B) and (C) only, 304(a) for purposes of section 304(b)(3) only, 304(b)(3), 305, and 306 shall take effect on the date of the enactment of this Act.

TITLE IV—TELECOMMUNICATIONS

SEC. 401. TELECOMMUNICATIONS RELAY SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

(a) TELECOMMUNICATIONS.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 225. TELECOMMUNICATIONS SERVICES FOR HEARING-IMPAIRED AND SPEECH-IMPAIRED INDIVIDUALS.

"(a) DEFINITIONS.—As used in this section—

"(1) COMMON CARRIER OR CARRIER.—The term 'common carrier' or 'carrier' includes any common carrier engaged in interstate communication by wire or radio as defined in section 3(h) and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b).

"(2) TDD.—The term 'TDD' means a Telecommunications Device for the Deaf, which is a machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system.

"(3) TELECOMMUNICATIONS RELAY SERVICES.—The term 'telecommunications relay services' means telephone transmission services that provide the ability for an individual who has a hearing impairment or speech impairment to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing impairment or speech impairment to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.

"(b) AVAILABILITY OF TELECOMMUNICATIONS RELAY SERVICES.—

"(1) IN GENERAL.—In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation, the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.

"(2) USE OF GENERAL AUTHORITY AND REMEDIES.—For the purposes of administering and enforcing the provisions of this section and the regulations prescribed thereunder, the Commission shall have the same authority, power, and functions with respect to common carriers engaged in intrastate communication as the Commission has in administering and enforcing the provisions of this title with respect to any common carrier engaged in interstate communication. Any violation of this section by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of this Act by a common carrier engaged in interstate communication.

"(c) PROVISION OF SERVICES.—Each common carrier providing telephone voice transmission services shall, not later than 3 years after the date of enactment of this section, provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. A common carrier shall be considered to be in compliance with such regulations—

"(1) with respect to intrastate telecommunications relay services in any State that does not have a certified program under subsection (f) and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the Commission's regulations under subsection (d); or

"(2) with respect to intrastate telecommunications relay services in any State that has a certified program under subsection (f) for such State, if such common carrier (or other entity

through which the carrier is providing such relay services) is in compliance with the program certified under subsection (f) for such State.

"(d) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, not later than 1 year after the date of enactment of this section, prescribe regulations to implement this section, including regulations that—

"(A) establish functional requirements, guidelines, and operations procedures for telecommunications relay services;

"(B) establish minimum standards that shall be met in carrying out subsection (c);

"(C) require that telecommunications relay services operate every day for 24 hours per day;

"(D) require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination;

"(E) prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services;

"(F) prohibit relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call; and

"(G) prohibit relay operators from intentionally altering a relayed conversation.

"(2) TECHNOLOGY.—The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 7(a) of this Act, the use of existing technology and do not discourage or impair the development of improved technology.

"(3) JURISDICTIONAL SEPARATION OF COSTS.—

"(A) IN GENERAL.—Consistent with the provisions of section 410 of this Act, the Commission shall prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section.

"(B) RECOVERING COSTS.—Such regulations shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service and costs caused by intrastate telecommunications relay services shall be recovered from the intrastate jurisdiction. In a State that has a certified program under subsection (f), a State commission shall permit a common carrier to recover the costs incurred in providing intrastate telecommunications relay services by a method consistent with the requirements of this section.

"(e) ENFORCEMENT.—

"(1) IN GENERAL.—Subject to subsections (f) and (g), the Commission shall enforce this section.

"(2) COMPLAINT.—The Commission shall resolve, by final order, a complaint alleging a violation of this section within 180 days after the date such complaint is filed.

"(f) CERTIFICATION.—

"(1) STATE DOCUMENTATION.—Any State desiring to establish a State program under this section shall submit documentation to the Commission that describes the program of such State for implementing intrastate telecommunications relay services and the procedures and remedies available for enforcing any requirements imposed by the State program.

"(2) REQUIREMENTS FOR CERTIFICATION.—After review of such documentation, the Commission shall certify the State program if the Commission determines that—

"(A) the program makes available to hearing-impaired and speech-impaired individuals, either directly, through designees, through a competitively selected vendor, or through regulation of intrastate common carriers, intrastate telecommunications relay services in such State in a manner that meets or exceeds the requirements of regulations prescribed by the Commission under subsection (d); and

"(B) the program makes available adequate procedures and remedies for enforcing the requirements of the State program.

"(3) METHOD OF FUNDING.—Except as provided in subsection (d), the Commission shall not refuse to certify a State program based solely on the method such State will implement for funding intrastate telecommunication relay services.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATION.—The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a State whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this section, to ensure continuity of telecommunications relay services.

"(g) COMPLAINT.—

"(1) REFERRAL OF COMPLAINT.—If a complaint to the Commission alleges a violation of this section with respect to intrastate telecommunications relay services within a State and certification of the program of such State under subsection (f) is in effect, the Commission shall refer such complaint to such State.

"(2) JURISDICTION OF COMMISSION.—After referring a complaint to a State under paragraph (1), the Commission shall exercise jurisdiction over such complaint only if—

"(A) final action under such State program has not been taken on such complaint by such State—

"(i) within 180 days after the complaint is filed with such State; or

"(ii) within a shorter period as prescribed by the regulations of such State; or

"(B) the Commission determines that such State program is no longer qualified for certification under subsection (f).".

(b) CONFORMING AMENDMENTS.—The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended—

(1) in section 2(b) (47 U.S.C. 152(b)), by striking "section 224" and inserting "sections 224 and 225"; and

(2) in section 221(b) (47 U.S.C. 221(b)), by striking "section 301" and inserting "sections 225 and 301".

SEC. 402. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

Section 711 of the Communications Act of 1934 is amended to read as follows:

"SEC. 711. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS.

"Any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of Federal government shall include closed captioning of the verbal content of such announcement. A television broadcast station licensee—

"(1) shall not be required to supply closed captioning for any such announcement that fails to include it; and

"(2) shall not be liable for broadcasting any such announcement without transmitting a closed caption unless the licensee intentionally fails to transmit the closed caption that was included with the announcement.".

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) IN GENERAL.—Except as otherwise provided in this Act, nothing in this Act shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act. Nothing in this Act shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by title I, in transportation covered by title II or III, or in places of public accommodation covered by title III.

(c) INSURANCE.—Titles I through IV of this Act shall not be construed to prohibit or restrict—

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this Act from establishing, sponsoring, observing or administering the terms of a

bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of title I and III.

(d) ACCOMMODATIONS AND SERVICES.—Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

SEC. 502. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

SEC. 503. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) RETALIATION.—No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this Act or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Act.

(b) INTERFERENCE, COERCION, OR INTIMIDATION.—It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this Act.

(c) REMEDIES AND PROCEDURES.—The remedies and procedures available under sections 107, 203, and 308 of this Act shall be available to aggrieved persons for violations of subsections (a) and (b), with respect to title I, title II and title III, respectively.

SEC. 504. REGULATIONS BY THE ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) ISSUANCE OF GUIDELINES.—Not later than 9 months after the date of enactment of this Act, the Architectural and Transportation Barriers Compliance Board shall issue minimum guidelines that shall supplement the existing Minimum Guidelines and Requirements for Accessible Design for purposes of titles II and III of this Act.

(b) CONTENTS OF GUIDELINES.—The supplemental guidelines issued under subsection (a) shall establish additional requirements, consistent with this Act, to ensure that buildings, facilities, rail passenger cars, and vehicles are accessible, in terms of architecture and design, transportation, and communication, to individuals with disabilities.

(c) QUALIFIED HISTORIC PROPERTIES.—

(1) IN GENERAL.—The supplemental guidelines issued under subsection (a) shall include procedures and requirements for alterations that will threaten or destroy the historic significance

of qualified historic buildings and facilities as defined in 4.1.7(1)(a) of the Uniform Federal Accessibility Standards.

(2) SITES ELIGIBLE FOR LISTING IN NATIONAL REGISTER.—With respect to alterations of buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq.), the guidelines described in paragraph (1) shall, at a minimum, maintain the procedures and requirements established in 4.1.7(1) and (2) of the Uniform Federal Accessibility Standards.

(3) OTHER SITES.—With respect to alterations of buildings or facilities designated as historic under State or local law, the guidelines described in paragraph (1) shall establish procedures equivalent to those established by 4.1.7(1) (b) and (c) of the Uniform Federal Accessibility Standards, and shall require, at a minimum, compliance with the requirements established in 4.1.7(2) of such standards.

SEC. 505. ATTORNEY'S FEES.

In any action or administrative proceeding commenced pursuant to this Act, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

SEC. 506. TECHNICAL ASSISTANCE.

(a) PLAN FOR ASSISTANCE.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Chair of the Equal Employment Opportunity Commission, the Secretary of Transportation, the Chair of the Architectural and Transportation Barriers Compliance Board, and the Chairman of the Federal Communications Commission, shall develop a plan to assist entities covered under this Act, and other Federal agencies, in understanding the responsibility of such entities and agencies under this Act.

(2) PUBLICATION OF PLAN.—The Attorney General shall publish the plan referred to in paragraph (1) for public comment in accordance with subchapter II of chapter 5 of title 5, United States Code (commonly known as the Administrative Procedure Act).

(b) AGENCY AND PUBLIC ASSISTANCE.—The Attorney General may obtain the assistance of other Federal agencies in carrying out subsection (a), including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce.

(c) IMPLEMENTATION.—

(1) RENDERING ASSISTANCE.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act may render technical assistance to individuals and institutions that have rights or duties under the respective title or titles for which such agency has responsibility.

(2) IMPLEMENTATION OF TITLES.—

(A) TITLE I.—The Equal Employment Opportunity Commission and the Attorney General shall implement the plan for assistance developed under subsection (a), for title I.

(B) TITLE II.—

(i) SUBTITLE A.—The Attorney General shall implement such plan for assistance for subtitle A of title II.

(ii) SUBTITLE B.—The Secretary of Transportation shall implement such plan for assistance for subtitle B of title II.

(C) TITLE III.—The Attorney General, in coordination with the Secretary of Transportation and the Chair of the Architectural Transportation Barriers Compliance Board, shall implement such plan for assistance for title III, except for section 304, the plan for assistance for which shall be implemented by the Secretary of Transportation.

(D) TITLE IV.—The Chairman of the Federal Communications Commission, in coordination with the Attorney General, shall implement such plan for assistance for title IV.

(3) TECHNICAL ASSISTANCE MANUALS.—Each Federal agency that has responsibility under paragraph (2) for implementing this Act shall, as part of its implementation responsibilities, ensure the availability and provision of appropriate technical assistance manuals to individuals or entities with rights or duties under this Act no later than six months after applicable final regulations are published under titles I, II, III, and IV.

(d) GRANTS AND CONTRACTS.—

(1) IN GENERAL.—Each Federal agency that has responsibility under subsection (c)(2) for implementing this Act may make grants or award contracts to effectuate the purposes of this section. Such grants and contracts may be awarded to individuals, institutions not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual (including educational institutions), and associations representing individuals who have rights or duties under this Act. Contracts may be awarded to entities organized for profit, but such entities may not be the recipients or grants described in this paragraph.

(2) DISSEMINATION OF INFORMATION.—Such grants and contracts, among other uses, may be designed to ensure wide dissemination of information about the rights and duties established by this Act and to provide information and technical assistance about techniques for effective compliance with this Act.

(e) FAILURE TO RECEIVE ASSISTANCE.—An employer, public accommodation, or other entity covered under this Act shall not be excused from compliance with the requirements of this Act because of any failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section.

SEC. 507. FEDERAL WILDERNESS AREAS.

(a) STUDY.—The National Council on Disability shall conduct a study and report on the effect that wilderness designations and wilderness land management practices have on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System as established under the Wilderness Act (16 U.S.C. 1131 et seq.).

(b) SUBMISSION OF REPORT.—Not later than 1 year after the enactment of this Act, the National Council on Disability shall submit the report required under subsection (a) to Congress.

(c) SPECIFIC WILDERNESS ACCESS.—

(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act is to be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act no agency is required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area in order to facilitate such use.

(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area.

SEC. 508. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. 509. COVERAGE OF CONGRESS AND THE AGENCIES OF THE LEGISLATIVE BRANCH.

(a) COVERAGE OF THE SENATE.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or of law, the provisions of this Act shall apply in their entirety to the Senate, except as provided in paragraph (2).

(2) EXERCISE OF AUTHORITY.—Authorities granted under this Act to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation shall be exercised by the Senate.

(b) COVERAGE OF THE HOUSE OF REPRESENTATIVES.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act or of law, the purposes of this Act shall, subject to paragraphs (2) and (3), apply in their entirety to the House of Representatives.

(2) EMPLOYMENT IN THE HOUSE.—

(A) APPLICATION.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to any employee in an employment position in the House of Representatives and any employing authority of the House of Representatives.

(B) ADMINISTRATION.—

(i) IN GENERAL.—In the administration of this paragraph, the remedies and procedures made applicable pursuant to the resolution described in clause (ii) shall apply exclusively.

(ii) RESOLUTION.—The resolution referred to in clause (i) is House Resolution 15 of the One Hundredth First Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the One Hundredth Congress, as agreed to October 4, 1988).

(C) EXERCISE OF RULEMAKING POWER.—The provisions of subparagraph (B) are enacted by the House of Representatives as an exercise of the rulemaking power of the House of Representatives, with full recognition of the right of the House to change its rules, in the same manner, and to the same extent as in the case of any other rule of the House.

(3) MATTERS OTHER THAN EMPLOYMENT.—

(A) IN GENERAL.—The rights and protections under this Act shall, subject to subparagraph (B), apply with respect to the conduct of the House of Representatives regarding matters other than employment.

(B) REMEDIES.—The Architect of the Capitol shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to subparagraph (A). Such remedies and procedures shall apply exclusively, after approval in accordance with subparagraph (C).

(C) APPROVAL.—For purposes of subparagraph (B), the Architect of the Capitol shall submit proposed remedies and procedures to the Speaker of the House of Representatives. The remedies and procedures shall be effective upon the approval of the Speaker, after consultation with the House Office Building Commission.

(c) INSTRUMENTALITIES OF CONGRESS.—

(1) IN GENERAL.—The rights and protections under this Act shall, subject to paragraph (2), apply with respect to the conduct of each instrumentality of the Congress.

(2) ESTABLISHMENT OF REMEDIES AND PROCEDURES BY INSTRUMENTALITIES.—The chief official of each instrumentality of the Congress shall establish remedies and procedures to be utilized with respect to the rights and protections provided pursuant to paragraph (1). Such remedies and procedures shall apply exclusively.

(3) REPORT TO CONGRESS.—The chief official of each instrumentality of the Congress shall, after establishing remedies and procedures for purposes of paragraph (2), submit to the Congress a report describing the remedies and procedures.

(4) DEFINITION OF INSTRUMENTALITIES.—For purposes of this section, instrumentalities of the Congress include the following: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

(5) CONSTRUCTION.—Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel act of 1980 and regulations promulgated pursuant to that Act.

SEC. 510. ILLEGAL USE OF DRUGS.

(a) IN GENERAL.—For purposes of this Act, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) RULES OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to exclude as an individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

(c) HEALTH AND OTHER SERVICES.—Notwithstanding subsection (a) and section 511(b)(3), an individual shall not be denied health services, or services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

(d) DEFINITION OF ILLEGAL USE OF DRUGS.—

(1) IN GENERAL.—The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(2) DRUGS.—The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

SEC. 511. DEFINITIONS.

(a) HOMOSEXUALITY AND BISEXUALITY.—For purposes of the definition of "disability" in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act.

(b) CERTAIN CONDITIONS.—Under this Act, the term "disability" shall not include—

(1) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) compulsive gambling, kleptomania, or pyromania; or

(3) psychoactive substance use disorders resulting from current illegal use of drugs.

SEC. 512. AMENDMENTS TO THE REHABILITATION ACT.

(a) DEFINITION OF HANDICAPPED INDIVIDUAL.—Section 7(8) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)) is amended by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following subparagraph:

"(C)(i) For purposes of title V, the term 'individual with handicaps' does not include an individual who is currently engaging in

the illegal use of drugs, when a covered entity acts on the basis of such use.

"(ii) Nothing in clause (i) shall be construed to exclude as an individual with handicaps an individual who—

"(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

"(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

"(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

"(iii) Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under title I, II and III, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

"(iv) For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against any handicapped student who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against nonhandicapped students. Furthermore, the due process procedures at 34 CFR 104.36 shall not apply to such disciplinary actions.

"(v) For purposes of sections 503 and 504 as such sections relate to employment, the term 'individual with handicaps' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.".

(b) DEFINITION OF ILLEGAL DRUGS.—Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) is amended by adding at the end the following new paragraph:

"(22)(A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

"(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.".

(c) CONFORMING AMENDMENTS.—Section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)) is amended—

(1) in the first sentence, by striking "Subject to the second sentence of this subparagraph," and inserting "Subject to subparagraphs (C) and (D),"; and

(2) by striking the second sentence.

SEC. 513. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. 514. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

And the House agree to the same.

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
MAJOR R. OWENS,
MATTHEW G. MARTINEZ,
STEVE BARTLETT,
HARRIS W. FAWELL,

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference, except that for consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, Mr. Rinaldo is appointed in lieu of Mr. Whittaker:

JOHN D. DINGELL,
EDWARD J. MARKEY,
THOMAS A. LUKEN,
NORMAN F. LENT,
BOB WHITTAKER,

For consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, in lieu of Mr. Whittaker:

MATT. RINALDO,

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on the Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
DON EDWARDS,
BOB KASTENMEIER,
HAMILTON FISH, Jr.,
F. JAMES SENSENBRENNER, Jr.
(agrees to the conference report with the exception

of "Item 13. Health and Safety" (Sec. 103(d))),

As an additional conferee, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

STENY H. HOYER,
Managers on the Part of the House.

EDWARD M. KENNEDY,
TOM HARKIN,
HOWARD M. METZENBAUM,
PAUL SIMON,
ORRIN HATCH,
DAVE DURENBERGER,
JAMES M. JEFFORDS,

From the Committee on Commerce, Science, and Transportation, solely for the consideration of issues within that Committee's jurisdiction (telecommunications, commuter transit, and drug testing of transportation employees):

FRITZ HOLLINGS,
DANIEL K. INOUYE,
JOHN C. DANFORTH,
Managers of the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Short title

The Senate bill titles the Act the Americans with Disabilities Act of 1989. The House amendment changes the date of 1990.

The Senate recedes.

1A. Finding and purposes

The House amendment, but not the Senate bill, includes the term "color" in its list of factors which have been the basis of discrimination for which there is legal recourse to redress such discrimination.

The Senate recedes.

TITLE I OF THE ADA (EMPLOYMENT)

2. Definition of the term "direct threat"

The House amendment, but not the Senate bill, defines the term "direct threat" to mean a significant risk to the health or safety of others that cannot he eliminated by reasonable accommodation.

The Senate recedes.

3. Definitions of terms "illegal use of drugs" and "drugs"

The Senate bill uses the phrase "illegal drug" and explains that the term means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act, the possession or distribution of which is unlawful under such Act and does not mean the use of a controlled substance pursuant to a valid

prescription or other uses authorized by the Controlled Substances Act.

The House amendment uses the phrase "illegal use of drugs" and defines the term to mean the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act and does not mean the use of controlled substances taken under supervision by a licensed health care professional or other uses authorized by the Controlled Substances Act or other provisions of Federal law. The House amendment defines the term "drugs" to mean a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act.

The Senate recedes.

4. Essential functions of the job

The Senate bill defines a qualified individual with a disability as a perosn who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.

The House amendment adds that consideration shall be given to the employer's judgment as to what functions of a job are essential and if an employer had prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

The Senate recedes.

5. Definition of the term "undue hardship"

(a) The Senate bill defines an "undue hardship" to mean an action requiring significant difficulty or expense and then list the factors that must be considered in determining whether an accommodation would impose an undue hardship.

The House amendment specifies that the term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors listed in the statute.

The Senate recedes.

(b) In determining whether accommodating a qualified applicant or employee with a disability imposes an "undue hardship," the Senate bill requires that the following factors be considered: (1) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of operation of the covered entity, including the composition and structure of the entity; and (3) the nature and cost of the action needed.

The House amendment includes the following factors: (1) the nature and cost of the accommodation needed under the ADA; (2) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (3) the overall financial resource of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, the geographic separate-

ness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

The Senate recedes.

6. Discrimination

The Senate bill and House amendment use the same terms but in a different order.

The Senate recedes.

7. Contract liability

The Senate bill specifies that covered entities cannot discriminate directly or indirectly through contracts with other parties.

The House amendment clarifies that a covered entity is only liable in contractual arrangements for discrimination against its own applicants or employees.

The Senate recedes.

8. Reasonable accommodation

The Senate bill specifies that it is discriminatory for a covered entity to deny an employment opportunity to a qualified job applicant or employee with a disability if such denial is based on the need of the covered entity to make reasonable accommodations. In a separate section, the Senate bill specifies that reasonable accommodations need not be provided if they would result in an undue hardship.

The House amendment clarifies the relationship between the obligation not to deny a job to an individual with a disability who needs a reasonable accommodation and the undue hardship limitation governing the covered entity's obligation to provide the reasonable accommodation by including these provisions under the same paragraph.

The Senate recedes.

9. Employment tests

The House amendment adds the term "qualification standards" to the phrase "employment tests or other selection criteria."

The Senate recedes.

10. Preemployment inquiries

The House amendment deletes the world "employee" from the preemployment inquiry provision.

The Senate recedes. The conferees note that in certain industries, such as air transportation, applicants for security and safety related positions are normally chosen on the basis of many competitive factors, some of which are identified as a result of post-offer pre-employment medical examinations. Thus, after the employer receives the results of the post-offer medical examination for applicants for safety or security sensitive positions, only those applicants who meet the employer's criteria for the job must receive confirmed offers of employment, so long as the employer does not use those results of the exam to screen out qualified individuals with disabilities on the basis of disability. The conferees do not intend for this Act to override any legitimate medical standards or requirements established by Federal, state or local law, or by em-

ployers for applicants for safety or security sensitive positions, if the medical standards are consistent with this Act.

11. Postemployment medical examinations

The Senate bill specifies that an employer shall not conduct or require a medical examination of an employee unless such examination or inquiry is shown to be job-related and consistent with business necessity.

The House amendment deletes the term "conduct" and adds that a covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site so long as the information obtained regarding the medical condition or history of any employee are kept confidential and are not used to discriminate against qualified individuals with disabilities.

The Senate recedes.

12. Defenses, in general

The Senate amendment includes a reference to "reasonable accommodations." The House adds the following phrase "as required under this title."

The Senate recedes.

13. Health and safety

The Senate bill includes as a defense that a covered entity may fire or refuse to hire a person with a contagious disease if the individual poses a direct threat to the health and safety of other individuals in the workplace.

The House amendment makes this specific defense applicable to all applicants and employees, not just to those with contagious diseases.

The Senate recedes. The conferees intend that the term "qualification standard" as used in section 103(b) permits a requirement that an individual with a disability not pose a direct threat to the health or safety of other individuals in the workplace if reasonable accommodation will not eliminate the direct threat. In addition, the conferees concur with the House provision that defines "direct threat" to mean "significant risk" (section 101(3)). The qualification standard in section 103(b) and the definition in section 101(3) clearly spell cut the right of the employer to take action to protect the rights of its employees and other individuals in the workplace. Such employer action would include not assigning an individual to a job if such an assignment would pose a direct threat to individuals in the workplace and such a threat could not be eliminated by reasonable accommodation. The conferees incorporate by reference the explanations of the term "direct threat" set out in Senate Report No. 101-116. Consistent with this explanation, in determining what constitutes a significant risk, the conferees intend that the employer may take into consideration such factors as the magnitude, severity, or likelihood of risk to other individuals in the workplace and that the burden would be on the employer to show the relevance of such factors in relying on the qualification standard.

14. Religious tenet exemption

The Senate bill specifies that a religious organization may require, as a qualification standard to employment, that all applicants and employees conform to the religious tenets of such organization.

The House amendment deletes the phrase "as a qualification standard to employment."

The Senate recedes.

15. Food handlers

The House amendment, but not the Senate bill, specifies that it shall not be a violation of this Act for an employer to refuse to assign or continue to assign any employee with an infectious or communicable disease of public health significance to a job involving food handling, provided that the employer shall make reasonable accommodation that would offer an alternative employment opportunity for which the employee is qualified and for which the employee would sustain no economic damage.

The House recedes. Consistent with section 103(b), the conferees note that nothing in the Americans With Disabilities Act shall require an employer to assign, or to continue to assign to a job any employee with a communicable or infectious disease who by reason of such disease poses a significant risk to the health or safety of others which cannot be eliminated by reasonable accommodation. The conferees acknowledge that such reasonable accommodation is not required if it imposes an undue hardship (as defined in section 101(10)) on the operation of the business.

Different types of contagious diseases pose different kinds of risks; some contagious diseases may pose a significant risk which cannot be eliminated by reasonable accommodation in certain job categories, such as food handling. The conferees do not intend to imply that a person with an infectious disease necessarily poses a health threat to others. Rather, the conferees intend for this policy to meet the legitimate concerns of employers that are based on health and safety concerns. The determination whether a particular individual poses a significant risk of transmitting an infection to others must be based on the facts applicable to that individual and be based on current and objective public health standards.

16. Illegal use of drugs and use of alcohol

(a) The Senate bill specifies that the term "qualified individual with a disability" does not include employees or applicants who are current users of illegal drugs, except that an individual who is otherwise handicapped shall not be excluded from the protections of the Act if such individual also uses or is addicted to drugs.

The House amendment specifies that "qualified person with a disability" does not include any applicant or employee who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

The Senate recedes. The provision excluding an individual who engages in the illegal use of drugs from protection is intended to ensure that employers may discharge or deny employment to persons who illegally use drugs on that basis, without fear of being

held liable for discrimination. The provision is not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current.

(b) The House amendment specifies that the following individuals are not excluded from the definition of the term "qualified individual with a disability": (1) an individual who has successfully completed a supervised rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use; (2) an individual who is participating in a supervised rehabilitation program and is no longer engaging in such use; or (3) an individual who is erroneously regarded as engaging in such use but is not engaging in such use.

The Senate recedes. Section 104(b)(2) provides that a person cannot be excluded as a qualified individual with a disability if that individual is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs. This provision does not permit persons to invoke the Act's protection simply by showing that they are participating in a drug treatment program. Rather, refraining from illegal use of drugs also is essential. Employers are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. On the other hand, this provision recognizes that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act. The conferees intend that the phrase "otherwise been rehabilitated successfully" be interpreted to refer to both inpatient and outpatient programs, as well as appropriate employee assistance programs that provide professional (not necessarily medical) assistance and counseling.

(c) The House amendment, but not the Senate bill, specifies that it is not a violation of title I of the Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual involved in rehabilitation programs is no longer engaging in the illegal use of drugs.

The Senate recedes. Conferees note that, for purposes of this title, an individual covered by the regulation described in section 104(c)(5) who tests positive on an employment related drug test conducted and verified in conformity with applicable federal regulations or guidelines is deemed to be "currently engaging in the illegal use of drugs" and may not invoke the Act's protection, except as provided in section 104(b)(3). The conferees do not intend to prevent individuals covered by section 104(c)(5) or any other individual covered by the employment provisions of the Act from challenging a positive drug test result by invoking the protection of section 104(b)(3). The ADA itself does not provide any standard by which the accuracy or validity of a drug test result is to be determined. Conferees also recognize that current Department of Transportation regulations allow or require, depending on the circumstances,

employers to remove individuals in safety sensitive positions who are undergoing drug rehabilitation from such positions. With respect to individuals illegally using drugs or impaired by alcohol, nothing in this Act is intended to affect federal laws or Department of Transportation regulations to protect public safety.

(d) The Senate bill specifies that the covered entity may require that employees behave in conformance with the requirements of the Drug-Free Workplace Act of 1988 and that transportation employees meet requirements established by the Secretary of Transportation with respect to drugs and alcohol.

The House amendment also includes reference to positions defined by the Department of Defense and the Nuclear Regulatory Commission.

The Senate recedes.

(e) The House amendment adds that nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by railroads of authority to: (1) test railroad employees in, and applicants for, positions involving safety-sensitive duties, as determined by the Secretary of Transportation, for the illegal use of drugs and for on-duty impairment by alcohol; and (2) remove such persons who test positive from safety-sensitive duties.

The Senate recedes with an amendment. The amendment substitutes the phrase "entitles subject to the jurisdiction of the Department of Transportation" for the word "railroad" in the House amdendment; substitutes the pharase "employees of such entities" for the term "railroad employees" in the House amendment; deletes the phrase "as determined by the Secretary of Transportation" in subsection (e)(1) of the House amendment; and adds the phrase "for illegal use of drugs and on duty impairment by alcohol" after the word "positive" in subsection (e)(2) of the House amendment. The conferees agree that, separate and apart from Department of Transportation regulations, nothing in this title shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise (e.g., as a result of collective bargaining agreements) by entities subject to the jurisdiction of DOT of authority to test employees of such entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and for on duty impairment by alcohol, and to remove such persons who test positive from safety sensitive duties. The conferees intend that the authority for transportation entities to remove persons who test positive includes authority for dismissal or disqualification, consistent with the provisions of this title. The conferees do not intend to prevent individuals covered by section 104(c)(5) or any other individual covered by the employment provisions of the Act, from challenging a positive drug test by invoking the protection of section 104(b)(3). The ADA itself, does not provide any standard by which the accuracy or validity of a drug test result is to be determined.

The conferees note that there was a typographical error in part 2 (Education and Labor Committee) of the House Report No. 101-485. The language in the last paragraph on page 81 should have appeared as follows: "The Act is not intended to disturb the legitimate and reasonable disciplinary rules and procedures established and enforced by professional sports leagues; nor is it intended to

disturb collectively bargained policies that have been entered into between league management and its players association that are not inconsistent with this Act."

17. Enforcement

(a) The House amendment adds "powers" to the phrase "remedies and procedures" to conform the ADA to title VII.

The Senate recedes.

(b) The House amendment adds to the enforcement section a reference to section 705 of title VII of the Civil Rights Act of 1964 (authority of the Equal Employment Opportunity Commission).

The Senate recedes.

(c) The House amendment adds a reference to "the Attorney General."

The Senate recedes.

(d) The House amendment substitutes the term "person," which is used and defined in title VII of the Civil Rights Act of 1964 for the term "individual" included in the Senate bill.

The Senate recedes.

(e) The Senate bill includes the phrase any individual "who believes he or she is being subjected to discrimination." The House amendment substitutes "any person alleging discrimination."

The Senate recedes.

18. Relationship with the Rehabilitation Act of 1973

The House amendment, but not the Senate bill, directs administrative agencies to develop procedures and coordinating mechanisms to ensure that ADA and Rehabilitation Act of 1973 administrative complaints are handled without duplication or inconsistent, conflicting standards. Further, agencies must establish the coordinating mechanisms in their regulations.

The Senate recedes with an amendment. The amendment specifies that "The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Momorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and the Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act."

TITLE II OF THE ADA (PUBLIC SERVICES)

19. Structure of title II

The Senate bill includes one set of standards applicable to all public entities providing public services, including entities providing public transportation.

The House amendment includes subtitle A—Prohibition Against Discrimination and Other Generally Applicable Provisions and subtitle B—Actions Applicable to Public Transportation Provided by Public Entities Considered Discriminatory. Two parts are included

under subtitle B: part I covers public transportation other than by aircraft or certain rail operations (intercity and commuter rail) and part II covers public transportation by intercity and commuter rail.

The Senate recedes.

SUBTITLE A—PROHIBITION AGAINST DISCRIMINATION AND OTHER GENERALLY APPLICABLE PROVISIONS

20. Definition of public entities

The Senate bill specifies that the public entities subject to the provisions of title II include: any state or local government or any department, agency, special purpose district, or other instrumentality of a State or local government. The accompanying report makes it clear that AMTRAK and commuter authorities are considered public entities.

The House amendment defines the term "public entity" to mean any state or local government or any department, agency, special purpose district, or other instrumentality of a state or states or local government; a commuter authority (as defined in section 103(8) of the Rail Passenger Service Act); and the National Railroad Passenger Corporation (AMTRAK).

The Senate recedes.

21. Qualified individual with a disability

The House amendment uses the term "public entity" in lieu of the list of entities covered by subtitle A.

The Senate recedes.

22. Discrimination, in general

The Senate bill specifies the general and specific prohibitions against discrimination by public entities.

The House amendment retains the general prohibition and clarifies that this general prohibition is subject to the other more specific provisions in title II. The House amendment also includes grammatical changes.

The Senate recedes. Questions have been raised regarding the obligation under this legislation of local and state governments to make 911 telephone emergency services available to hearing impaired and speech impaired persons. It is the intent of the conferees that the telephone emergency services operated by local and state governments be accessible to such individuals. This means that such telephone emergency systems must be equipped with technology that gives these individuals direct access to emergency services. For the present, this would require that local emergency systems provide a direct telephone line for individuals who rely on telecommunications devices for the deaf (the Baudot format) and computer modems (the ASCII format) to make telephone calls. In the future, new technology, such as speech-to-text services, may require other forms of direct access for such individuals. With this title II mandate, individuals with hearing and speech impairments will finally join the rest of us in having immediate access to assistance from police, fire, and ambulance services.

23. Enforcement

The Senate bill specifies that the remedies, procedures, and rights set out in section 505 of the Rehabilitation Act of 1973 shall be available with respect to any individual who believes that he or she is being subjected to discrimination on the basis of disability in violation of this Act, or regulations promulgated under section 204 concerning public services.

The House amendment provides that the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202.

The Senate recedes.

24. Regulations and standards

The Senate bill specifies that the Attorney General shall issue regulations implementing title II with the exception of section 203 pertaining to public transportation provided by public entities.

The House amendment, consistent with the revised structure used by the House, specifies that the Attorney General shall promulgate regulations that implement subtitle A. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223 (paratransit), section 229 (regulations relating to part I of subtitle B), and section 244 (regulations relating to part II of subtitle B).

The House amendment also specifies that regulations shall include standards applicable to facilities and vehicles covered by subtitle A, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B.

The Senate recedes.

SUBTITLE B—ACTIONS APPLICABLE TO PUBLIC TRANSPORTATION PROVIDED BY PUBLIC ENTITIES CONSIDERED DISCRIMINATORY

Part I—Public Transportation Other Than by Aircraft or Certain Rail Operations

25. Definitions

The Senate bill uses the following phrases: "demand responsive system," "fixed route system," "operates," and "public transportation."

The House amendment adds definitions for the terms "demand responsive system," "fixed route system" and "operates." The House amendment also substitutes the phrase "designated public transportation" for the phrase "public transportation" and includes the following definition: transportation (other than public school transportation) by bus, rail, or by other conveyance (other than transportation by aircraft, or intercity or commuter rail) that provides the general public with general or special service (including charter service) on a regular and continuing basis. The House amendment also includes a definition for the term "public school transportation."

The Senate recedes.

26. Purchase or lease of new and used fixed route vehicles

With slightly different wording, the Senate bill and the House amendment require that all new vehicles purchased or leased by a public entity which operates a fixed route system be accessible and require such public entity to make demonstrated good faith efforts to purchase or lease used vehicles that are accessible.

The Senate recedes.

27. Remanufactured and historic vehicles

The Senate bill specifies that if a public entity remanufactures a vehicle, or purchases or leases a remanufactured vehicle so as to extend its usable life for 5 years or more, the vehicle must, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities.

With slightly different phrasing, the House amendment includes the policy in the Senate version applicable to remanufactured vehicles and adds a specific provision in the legislation for historic vehicles. Under the provision, if making a vehicle of historic character (which is used solely on any segment of a fixed route system that is included on the National Register of Historic Places) readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity only has to make (or purchase or lease a remanufactured vehicle with) those modifications which do not significantly alter the historic character of such vehicle.

The Senate recedes.

28. Paratransit

The Senate bill specifies that if a public entity operates a fixed route system, it is discrimination for a public transit authority to fail to provide paratransit or other special transportation services sufficient to provide a comparable level of services as is provided to individuals using the fixed route transportation to individuals with disabilities who cannot otherwise use fixed route transportation and individuals associated with such individuals with disabilities unless the public transit authority can demonstrate that the provision of paratransit or other transportation services would impose an undue financial burden on the public transit entity. If the provision of comparable paratransit services would impose an undue financial burden on the public entity, such entity must provide such service to the extent that provision of such services would not impose an undue financial burden on such entity. The Senate version specifies that the definition of undue financial burden may include reference to a flexible numerical formula that incorporates appropriate local characteristics such as population.

The House amendment includes the following changes.

(a) The House amendment clarifies that a public entity that only provides commuter bus service need not provide paratransit.

The Senate recedes.

(b) The House amendment specifies that comparable level of service must be provided but in the case of response time, it must be comparable, to the extent practicable.

The Senate recedes.

(c) Under the House amendment, paratransit and other special transportation services must be provided to three categories of individuals with disabilities:

to any individual with a disability who is unable as a result of a physical or mental impairment (including a vision impairment) without the assistance of another individual (except an operator of a wheelchair lift or other boarding assistance device) to board, ride, or disembark from any vehicle on the system which is accessible;

to any individual with a disability who needs the assistance of a wheelchair lift or other boarding assistance device (and is able with such assistance) to board, ride, and disembark from any vehicle which is accessible if the individual wants to travel on a route on the system during the hours of operation of the system at a time (or within a reasonable period of such time) when such an accessible vehicle is not being used to provide designated public transportation on the route; and

to any individual with a disability who has a specific impairment-related condition which prevents such individual from traveling to a boarding location or from a disembarking location on such system.

For purposes of the first two categories of individuals with disabilities, boarding or disembarking from a vehicle does not include travel to the boarding location or from the disembarking location.

The Senate recedes.

(d) The House amendment clarifies that paratransit and special transportation services need only be provided in the service area of each public entity that operates a fixed route system and not in any portion of the service area in which the public entity solely provides commuter bus service.

The Senate recedes.

(e) The House amendment deletes the permissive reference to flexible numerical formula.

The Senate recedes.

(f) The House amendment requires that paratransit be available to one other person accompanying the individual with a disability.

The House recedes with an amendment. The amendment provides that in addition to the one individual specified in the House amendment, paratransit services must be available to other individuals accompanying the individual with a disability provided that space for these additional individuals is available on the paratransit vehicle carrying the individual with a disability and that the transportation of such additional individual will not result in a denial of service to individuals with disabilities. Throughout this section, the conferees intend that individuals accompanying the individual with a disability travel between the same boarding and disembarking locations as the individual with a disability.

(g) The House amendment specifies that each public entity must submit plans for operating paratransit services to the Secretary. The plan must include, among other things, the identity of any other public entity or person providing paratransit service and provide that the public entity does not have to provide directly under the plan the identified paratransit services being provided to others.

The Senate recedes.

(h) The House amendment includes a statutory construction provision that makes it clear that nothing in the ADA should be construed as preventing a public entity from providing paratransit services at a level which is greater than the level required by the ADA, from providing paratransit services in addition to those services required by the ADA, or from providing such services to individuals in addition to those individuals to whom such services are required to be provided by the ADA.

The Senate recedes.

29. Demand responsive systems operated by a public entity

With slightly different wording, the Senate bill and the House amendment specify rules for public entities operating demand responsive systems.

The Senate recedes.

30. New facilities

The House amendment substitutes the phrase "designated public transportation services" for the phrase "public transportation services" used in the Senate bill.

The Senate recedes.

31. Alterations to existing facilities

(a) The House amendment adds a reference to "designated public transportation."

The Senate recedes

(b) The Senate bill requires that when major structural alterations are made, the alterations as well as the path of travel must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function" for the Senate language "major structural alteration" and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations as determined under criteria established by the Attorney General.

The Senate recedes

32. Key stations in rapid and light rail systems

(a) The Senate bill provides an extension of up to 20 years for making key stations in rapid rail or light rail systems accessible where extraordinary expensive structural changes are required.

The House amendment permits 30 years where extraordinary expensive structural changes are required except that by the last day of the 20th year at least two-thirds of such key stations must be readily accessible.

The Senate recedes

(b) With slightly different wording, both the Senate bill and the House amendment require the development of plans and milestones.

The Senate recedes

33. Access to non-key stations

With slightly different phrasing, the Senate bill and the House amendment specify rules governing non-key existing stations.

The Senate recedes with an amendment. In section 228(a), strike out paragraph (2) and insert in lieu thereof the following new paragraphs:

"(2) EXCEPTION.—Paragraph (1) shall not require a public entity to make structural changes to existing facilities in order to make such facilities accessible to individuals who use wheelchairs, unless and to the extent required by section 227(a) (relating to alterations) and section 227(b) (relating to key stations).

"(3) UTILIZATION.—Paragraph (1) shall not require a public entity to which paragraph (2) applies, to provide to individuals who use wheelchair services made available to the general public at such facilities when such individuals could not utilize or benefit from such services provided at such facilities."

34. One car per train rule applicable to rapid rail and light rail systems.

The Senate bill provides that as soon as practicable, but in any event in no less than 5 years, rail systems must have at least one car per train that is accessible to individuals with disabilities.

The House amendment specifies that the one car per train rule only applies with respect to trains that have two or more vehicles and includes a special provision applicable to historic trains.

The Senate recedes.

35. Interim accessibility

The House amendment, but not the Senate bill, specifies that for new construction and alterations for which a valid and appropriate state or local building permit is obtained prior to the issuance of final regulations and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the accessibility requirement except that if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines, compliance with such supplemental guidelines shall be necessary.

The Senate recedes.

36. Effective date

The Senate bill specifies that the section in title II pertaining to new fixed route vehicles shall become effective on the date of enactment.

The House amendment specifies that sections concerning fixed route vehicles, demand responsive, stations, one car per train and regulations become effective on the date of enactment.

The Senate recedes.

Part II—Public Transportation by Intercity and Commuter Rail

37. Definitions

The House amendment but not the Senate bill includes definitions of the following terms: "commuter authority," "commuter rail transportation," "intercity rail transportation," "rail passenger car," "responsible person," and "station."

The Senate recedes.

38. One car per train rule for intercity rail transportation

With slightly different wording, the Senate bill and the House amendment specify a one car per train rule for intercity rail transportation.

The Senate recedes.

39. New intercity cars

The Senate bill provides that all new intercity vehicles must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The House amendment includes a general obligation to make new intercity cars accessible that is identical to the provision in the Senate bill but includes special rules of accessibility applicable to people who use wheelchairs for specific categories of passenger car.

The Senate recedes.

40. One car per train rule and new commuter rail cars

(a) With slightly different wording, the Senate bill and the House amendment specify the one car per train rule for persons providing commuter rail transportation.

The Senate recedes.

(b) The Senate bill provides that all new commuter rail cars must be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

The House amendment adopts the same standard and specifies that the term "readily accessible to and usable by" shall not be construed to require: a restroom usable by an individual who uses a wheelchair if no restroom is provided in such car for any passenger; space to store and fold a wheelchair; or a seat to which a passenger who uses a wheelchair can transfer.

The Senate recedes.

41. Used and remanufactured rail cars

The Senate bill includes special rules for the purchase of all types of used and remanufactured vehicles.

The House amendment includes special provisions applicable to the purchase of used rail cars and remanufactured rail cars similar to the provisions included in the Senate bill applicable to all vehicles (the time period for remanufacture is 10 years for rail cars instead of 5 years for other vehicles).

The Senate recedes.

42. New and existing stations

(a) With respect to commuter rail, the Senate bill specifies that existing key stations must be made accessible as soon as practicable but in no event later than 3 years after the effective date, except that the time limit may be extended to 20 years after the date of enactment in a case where extraordinarily expensive structural changes are necessary to attain accessibility.

The House amendment provides that the extension to 20 years applies where the raising of the entire passenger platform is the only means available of attaining accessibility or where other extraordinarily expensive structural changes are necessary to attain accessibility.

The Senate recedes.

(b) The Senate report explains the criteria used to determine which stations are considered "key." The House amendment places these criteria in the legislation. The factors that must be taken into consideration, after consultation with individuals with disabilities and organizations representing such individuals include: high ridership and whether such station serves as a transfer or feeder station.

The Senate recedes.

43. Alterations of existing facilities

(a) The Senate bill specifies that a facility or any part thereof that is used for public transportation and that is altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility must be altered in such a way that it is readily accessible to and usable by individuals with disabilities.

The House amendment adopts the same standard but substitutes for the phrase "public entity" the phrase "responsible person, owner, or person in control of the station."

The Senate recedes.

(b) The Senate bill requires that when major structural alterations are made, the alterations as well as the path of travel must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function" for the Senate language "major structural alteration" and adds that the alterations to the part of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations.

The Senate recedes.

(c) The House amendment also specifies that it is considered discrimination for an owner or person in control of a station to fail to provide reasonable cooperation to a responsible person with respect to such station in the responsible person's efforts to provide accessibility. An owner, or person in control of a station is liable to a responsible person for any failure to provide reasonable cooperation. The House amendment also makes it clear, however, that failure to

receive reasonable cooperation shall not be a defense to a claim of discrimination by an individual with a disability.

The Senate recedes.

44. Interim accessibility standards

The House amendment, but not the Senate bill, specifies the standards that would apply to stations and rail passenger cars during an interim period between the effective date and the date regulations are issued in final form.

The Senate recedes.

TITLE III OF THE ADA

45. Definitions

(a) The Senate bill includes the term "potential places of employment" to describe facilities subject to the new construction requirements.

The House amendment substitutes the term "commercial facilities" for the phrase "potential places of employment." The House amendment also specifies that the term does not include railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in section 222 or covered under title II, or railroad rights-of-way.

The Senate recedes.

(b) The House amendment, but not the Senate bill, includes definitions for the following terms: "demand responsive system," "fixed route system," and "over-the-road bus."

The Senate recedes.

(c) The House amendment, but not the Senate bill, defines the term "private entity" to mean any entity other than a public entity, as defined in title II.

The Senate recedes.

(d) The Senate bill lists a number of specific types of entities that are considered public accommodations and then includes the following catch-all phrase "and other similar places."

The House amendment deletes the term "similar." In addition, the House amendment makes several technical changes to the categories.

The Senate recedes.

(e) The House amendment, but not the Senate Bill, defines the term "rail" and "railroad."

The Senate recedes.

(f) In determining whether making changes to existing facilities are "readily achievable," the Senate bill requires that the following factors be considered: (1) the overall size of the covered entity with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of operation of the covered entity, including the composition and structure of the entity, and (3) the nature and cost of the action needed.

The House amendment includes the following factors: (1) the nature and cost of the action needed under the ADA; (2) the overall financial resources of the facility or facilities involved in the action, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such action

upon the operation of the facility; (3) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and (4) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

The Senate recedes.

(g) The House amendment substitutes the term "specified public transportation" for the term "public transportation" with no change in the definition.

The Senate recedes.

(h) The House amendment, but not the Senate bill, defines the term "vehicle" as not including a rail passenger car, railroad locomotive, railroad freight car, railroad caboose, or a railroad car described in section 242 or covered under title III.

The Senate recedes.

46. Entities subject to the prohibitions against discrimination

The Senate bill specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

The House amendment clarifies that this prohibition applies to any person who owns, leases (or leases to), or operates a place of public accommodation.

The Senate recedes.

47. Contract liability

The Senate bill specifies that covered entities cannot engage in discrimination indirectly through contracts with other parties.

The House amendment specifies that covered entities are only liable in contractual arrangements for discrimination against the entity's own customers and clients and not the contractor's customers and clients.

The Senate recedes.

48. Readily achievable changes to existing barriers

The House amendment adds rail passenger cars used by an establishment for transporting individuals to the list of vehicles from which barriers must be removed.

The Senate recedes.

49. Fixed route and demand responsive systems

With slightly different wording, the Senate bill and the House amendment specify standards for fixed route and demand responsive systems operated by private entities.

The Senate recedes.

50. Health and safety

The House amendment, but not the Senate bill, specifies that nothing in title III requires an entity to permit an individual to participate in or benefit from the goods, services, facilities, privi-

leges, advantages and accommodations of such entity where such individual poses a direct threat to the health or safety of others. The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

The Senate recedes.

51. New construction and alterations to existing facilities

(a) The Senate bill includes in separate sections the requirements that alterations and new construction be readily accessible to and usable by individuals with disabilities.

The House amendment places these two requirements in the same section.

The Senate recedes. Section 303(b) of the Act provides that discrimination as set forth in section 303(a) concerning new construction and alterations in public accommodations and commercial facilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities. The exception does not affect the requirement that every newly constructed facility subject to the Act shall have at least one ground story that is readily accessible to and usable by individuals with disabilities. Accessibility requirements shall not be evaded by constructing facilities in such a way that no story constitutes a "ground floor", for example, by constructing a building whose main entrance leads only to stairways or escalators that connect with upper or lower floors; at least one accessible ground story must be provided.

(b) The Senate bill specifies that when major structural alterations are made to public accommodations operated by private entities, the alterations as well as the path of travel and facilities must be accessible to individuals with disabilities to the maximum extent feasible.

The House amendment substitutes the phrase "an alteration that affects or could affect usability or access to an area of the facility containing a primary function," for the Senate language, "major structural alteration," and adds that the alterations to the path of travel and facilities serving the altered area should "not be disproportionate" to the overall alterations in terms of the cost and scope of the overall alterations.

The Senate recedes. The conferees note that in part 2 (Education and Labor Committee) of House Report No. 101-485, language following the word "alteration" at the end of the third line of the second full paragraph on page 113 was inadvertently omitted. This language specifies that the parameters of the concept of disproportionality of section 303(a)(2) of the bill will be set forth in the minimum guidelines issued by the Architectural and Transportation Barriers Compliance Board and in the regulations promulgated by the Attorney General. The conferees wish to indicate their understanding that the requirement of an accessible path of travel, ac-

cessible restrooms, drinking fountains, and telephones serving the altered area would be disproportionate if the inclusion of such features would be so large an undertaking, in expense or scope of work, as to be disproportionate to the remainder of the contemplated alteration project.

52. Discrimination and construction

With slightly different wording, the Senate bill and the House amendment specify the general prohibition of discrimination and specific constructions of such discrimination.

The Senate recedes.

53. New vehicles other than new rail passenger cars

The Senate bill specifies that new vehicles other than automobiles purchased by a private entity in the principal business of transporting people must be readily accessible to and usable by individuals with disabilities.

The House amendment includes a special rule for vans with a seating capacity of less than 8 passengers. Such vans need not be accessible if the van is to be used solely in a demand responsive system and if the private entity can demonstrate that the system for which the van is being purchased or leased, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

The Senate recedes.

54. New rail passenger cars

The Senate bill specifies that all new vehicles purchased by a private entity in the principal business of transporting people must be readily accessible.

The House amendment includes a separate provision applicable to new rail passenger cars purchased by such entities and includes the same standard set out in the Senate bill.

The Senate recedes.

55. Remanufactured rail passenger cars

The House amendment, but not the Senate bill, specifies that the remanufacture of a rail passenger car so as to extend its usable life for 10 years or more must be remanufactured in a manner to make it readily accessible "to the maximum extent feasible."

The Senate recedes.

56. Historical or antiquated rail passenger cars and stations serving such cars

The House amendment, but not the Senate bill, specifies that historical or antiquated vehicles that are currently in use or are remanufactured by private entities need not be made accessible to the extent that compliance would significantly alter the historic or antiquated character of such a car or rail station served exclusively by such cars or would result in a violation of safety rules issued by the Secretary of Transportation.

The Senate recedes.

57. Over-the-road buses

The Senate bill specifies that over-the-road buses must be readily accessible to and usable by individuals with disabilities within 7 years for small providers and 6 years for other providers. Further, the Senate bill specifies that the Office of Technology Assessment must conduct a study to determine the access needs of individuals with disabilities and the most cost efficient methods of making such buses readily accessible to and usable by individuals with disabilities.

The House amendment deletes the specific obligation to make each bus "readily accessible to and usable by" individuals with disabilities at the end of the 6 or 7 year period, whichever is applicable. Instead, the House amendment specifies that the purchase of new over-the-road buses must be made in accordance with regulations issued by the Secretary of Transportation. In issuing final regulations, the Secretary must take into account the purposes of the study and any recommendations resulting from the study. The obligations set out in the final regulations go into effect in 7 years for small providers and 6 years for others. The final regulations may not require the installation of accessible restrooms in over-the-road buses if such installation would result in a loss of seating capacity.

In the interim, regulations issued by the Secretary may not require any structural changes to over-the-road buses in order to provide access to individuals who use wheelchairs and may not require the purchase of boarding assistance devices to provide access.

With respect to the study, the purpose of the study is revised to include a determination of the access needs of individuals with disabilities to over-the-road buses and over-the-road bus service and the most cost effective methods for providing access to over-the-road buses and over-the-road bus service to individuals with disabilities, particularly individuals who use wheelchairs, through all forms of boarding options. The study must analyze, among other things, the effectiveness of various methods of providing accessibility to such buses and service to individuals with disabilities.

The Senate recedes.

58. Interim accessibility

The House amendment, but not the Senate bill, specifies that for new construction and alterations for which a valid and appropriate state or local building permit is obtained prior to the issuance of final regulations and for which the construction or alteration authorized by such permit begins within one year of the receipt of such permit and is completed under the terms of such permit, compliance with the Uniform Federal Accessibility Standards in effect at the time the building permit is issued shall suffice to satisfy the accessibility requirement except that if such final regulations have not been issued one year after the Architectural and Transportation Barriers Compliance Board has issued the supplemental minimum guidelines, compliance with such supplemental guidelines shall be necessary. The House amendment also includes interim policies applicable to vehicles and rail passenger cars.

The Senate recedes.

59. Enforcement in general

(a) The Senate bill makes reference to the remedies available to an "individual" under title II of the Civil Rights Act of 1964.

The House amendment substitutes the term "person" for the term "individual" since "person" is used in title II.

The Senate recedes.

(b) The Senate bill specifies that remedies and procedures of the 1964 Civil Rights Act will be available to any individual who is or is about to be subjected to discrimination on the basis of disability.

The House amendment specifies that the remedies and procedures of title II of the 1964 Civil Rights Act shall be the powers, remedies, and procedures title III provides to any person who is being subject to discrimination on the basis of disability in violation of title III or any person who has "reasonable grounds" for believing that he or she is about to be subjected to discrimination with respect to the construction of new or the alteration of existing facilities in an inaccessible manner.

The Senate recedes.

(c) The House amendment, but not the Senate bill, includes in the legislation the following policy set out in the Senate report: nothing in the enforcement section shall require an individual with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

The Senate recedes.

(d) The House amendment, but not the Senate bill, specifies that state and local governments can apply to the Attorney General to certify that state or local building codes meet or exceed the minimum accessibility requirements of the ADA. In ruling on such applications from state or local governments, the Attorney General will consult with the Architectural and Transportation Barriers Compliance Board and consider the testimony of individuals with disabilities at public hearings about the state or local building code application.

The Senate recedes.

(e) The Senate bill specifies that the courts may assess civil penalties against an entity not to exceed $50,000 for the first violation and $100,000 for any subsequent public accommodation discrimination violation.

The House amendment specifies that when there are multiple violations that make up a pattern or practice suit brought by the Attorney General, all violations count as a first violation for the purpose of assessing the maximum civil penalty of $50,000. The maximum penalty of $100,000 for a subsequent violation can be applied only in a subsequent case.

The Senate recedes.

(f) The Senate bill specifies that the Attorney General may seek "monetary damages" on behalf of an aggrieved party in title III public accommodation civil actions.

The House amendment clarifies that "monetary damages" and other relief available to aggrieved persons under title III public accommodation suits brought by the Attorney General do not include punitive damages.

The Senate recedes.

(g) The Senate bill specifies that the courts may give consideration to an entity's "good faith" efforts to comply with the ADA in considering the amount of civil penalty.

The House version elaborates on the issue of good faith by requiring that the court consider whether an entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the particular needs of an individual with a disability.

The Senate recedes.

60. Examinations and courses

The House amendment, but not the Senate bill, specifies that any persons that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or post-secondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

The Senate recedes.

61. Effective date

(a) The House amendment, but not the Senate bill, precludes suits against small business for 6 months or 12 months (depending on the size of the small business and its gross receipts) after the effective date of title III of the Act (18 months after date of enactment) for all violations except those relating to new construction and alterations.

The Senate recedes with an amendment. The amendment deletes the introductory phrase in section 310(b) and substitutes in lieu thereof the following: "Except for any civil action brought for a violation of section 303, no civil action shall be brought for any act or omission described in section 302 which occurs—". The purpose of the amendment is to make it clear that in order for an individual with a disability to bring a civil action against a small business meeting the criteria set out in the provision, the discriminatory act must occur after the applicable period has expired. The conferees note that this section gives small businesses additional time to learn the requirements of the ADA and to come into compliance with the Act before they will be subject to a civil action. The conferees fully expect that businesses will, however, make good faith efforts to comply with the Act during this additional phase-in period .

(b) With slightly different wording, the Senate bill and the House amendment provide that certain provisions of title III go into effect on the date of enactment.

The Senate recedes.

TITLE IV OF THE ADA (TELECOMMUNICATION RELAY SERVICES)

62. Definition of "common carrier" or "carrier"

The House amendment deletes the phrase "and any common carrier engaged in both interstate and intrastate communication."

The Senate recedes.

63. General authority and remedies

The Senate bill specifies that the same remedies, procedures, rights, and obligations applicable to common carriers engaged in interstate communication by wire or radio are also applicable to common carriers engaged in intrastate communication.

The House amendment clarifies, without changing the meaning or intent of the Senate language.

The Senate recedes.

64. Provision of telecommunication services

The Senate bill specifies that each common carrier providing telephone voice transmission services shall provide telecommunication relay services individually, through designees, or in concert with other carriers not later than 3 years after the date of enactment.

The House amendment makes several clarifying changes.

(a) The House amendment specifies that a common carrier must only provide relay services "within the area in which it offers service" to ensure that a common carrier on one side of the country is not held responsible to provide services for consumers in a state on the other side of the country.

The Senate recedes with an amendment. The amendment deletes the word "within" and substitutes in lieu thereof the term "throughout."

(b) The House amendment specifies that common carriers may provide relay services "through a competitively selected vendor" in addition to providing such services through designees or in concert with other carriers.

The Senate recedes.

(c) The House amendment specifies that a common carrier is considered in compliance with FCC regulations if the common carrier is either in direct compliance itself with those regulations, or if the "entity through which [it] is providing such relay services" is in compliance with the Commission's regulations. Further, the common carrier is considered in compliance with the FCC's regulations with respect to intrastate relay services when they or their designees are in compliance with a state certified program.

The Senate recedes.

65. Regulations

The Senate bill directs the FCC to issue regulations covering, among other things, minimum standards for the relay systems, conduct by relay operators, separation of costs, and delay in the implementation date.

The House amendment includes two clarifying changes.

(a) The Senate bill requires the FCC to establish minimum standards that would be met "by common carriers" in providing relay services. The House amendment deletes the language in quotas.

The Senate recedes.

(b) With respect to the conduct of relay operators, the House amendment specifies that a relay operator is subject to the same

standards of conduct that operators are subject to under the Communications Act of 1934.

The Senate recedes.

66. Technology

The House amendment adds a reference to section 7(a) of the Communications Act of 1934.

The Senate recedes.

67. Recovery of costs

The House amendment includes the following changes applicable to recovery of costs.

(a) The House amendment specifies that costs caused by interstate relay services will be recovered from all subscribers for every interstate service, thereby ensuring that even those businesses that have private telecommunications systems will contribute to the cost of providing interstate relay services.

The Senate recedes.

(b) The House amendment authorizes State commissions to permit recovery by common carriers of costs incurred in providing intrastate relay services in states that are certified.

The Senate recedes.

(c) The Senate bill prohibits the imposition of a fixed monthly charge on residential customers to recover the costs of providing interstate relay services.

The House amendment deletes this provision.

The Senate recedes.

(d) The Senate bill extends the implementation period to three years for all common carriers and includes authority to extend it one additional year if a common carrier can demonstrate undue burden. The House amendment deletes the undue burden provision.

The Senate recedes.

68. Requirements for State certification

The Senate bill specifies that each State may submit documentation to the FCC that describes the program of such state for implementing intrastate relay services.

The House amendment specifies that such documentation must also include the procedures and remedies available for enforcing any requirements imposed by the State program. The House amendment also provides that in certifying the program the FCC must determine that the program makes available adequate procedures and remedies for enforcing the requirements of the State program. The House amendment also specifies that in a State whose program has been suspended or revoked, the Commission must take such steps as may be necessary to ensure continuity of telecommunications relay services.

The Senate recedes.

69. Closed-captioning of public service announcements

The House amendment, but not the Senate bill, adds a provision requiring the closed-captioning of all television pubic service announcements produced or funded by the Federal government.

The Senate recedes.

TITLE V OF THE ADA (MISCELLANEOUS PROVISIONS)

70. Construction

(a) The House amendment adds the phrase "except as otherwise provided in this Act" as a qualification to the provision construing the interpretation of the ADA.

The Senate recedes.

(b) With slightly different wording, the Senate bill and the House amendment specify the relationship between the ADA and other Federal laws (including the Rehabilitation Act) and state laws. The House amendment also specifies that nothing in the ADA shall be construed to preclude the prohibition of, or the imposition of restriction on, smoking in places of employment, in transportation provided by public and private entities, and places of public accommodations.

The Senate recedes. In light of the concerns raised by some conferees with regard to individuals with contagious diseases of public health significance who work in food handling jobs, the conferees note certain points with regard to this section. First, if a state or locality has a disease control law, or any other public health law, which places certain requirements on certain employees, employers or businesses, but which does not discriminate against people with disabilities, such laws would not be affected by or preempted in any way by the ADA. For example, if a state disease control law requires certain hygienic procedures to be followed by all employees in certain job categories, that law would not be affected in any way by the ADA. In addition, if a state or locality has a disease control law or any other public health law, which applies to certain people with disabilities (for example, if a state has a law which required people with certain contagious diseases, such as tuberculosis, to take certain precautions), that law would also not be preempted by the ADA as long as the requirements of that state or local law were designed to protect against individuals who pose a direct threat to the health or safety of others. Because the ADA itself allows adverse actions to be taken against employees who pose a direct threat to the health or safety of others in the workplace, and against clients and customers who pose a direct threat to others in a public accommodation (as "direct threat" is defined in the statute), a state public health law that similarly guarded against such threats would be a law providing protection equal to that provided by the ADA and hence would not be preempted by the ADA.

(c) The section in the Senate bill concerning insurance includes the proviso "Provided, That paragraphs (1), (2), and (3) are not used as a subterfuge to evade the purposes of title I and III." The House amendment includes the following phrase "Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of titles I and III."

The Senate recedes.

(d) The House amendment, but not the Senate bill, specifies that nothing in the Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

The Senate recedes.

71. State immunity

The House amendment adds states courts of competent jurisdiction to the reference to federal courts included in the Senate bill.

The Senate recedes.

72. Prohibition against retaliation and coercion

With slightly different wording, the Senate bill and the House amendment include prohibitions against retaliation and coercion.

The Senate recedes.

73. Guidelines by the ATBCB

The Senate bill provides 6 months for the issuance of guidelines. The House amendment provides 9 months.

The Senate recedes.

74. Historic buildings

The House amendment, but not the Senate bill, includes specific provisions applicable to historic buildings.

The Senate recedes.

75. Technical assistance manuals

(a) The Senate bill, but not the House amendment, includes, among others, the National Council on Disability, as an agency responsible for the development of a technical assistance plan.

The Senate recedes. The conferees intend to recognize the National Council on Disability as the impetus, force, and originator of the initial legislation for the Americans with Disabilities Act, reflected in the Council's report, *Towards Independence,* published in February, 1986. Therefore, the conferees agree that the National Council on Disability should be one of the federal agencies with which the Attorney General consults in developing a plan to assist entities covered under this Act. The experience, expertise, and commitment of the Council will ensure that the technical assistance activities mandated under section 506 will be comprehensive, focused, and timely.

(b) With slightly different wording, the Senate bill and the House amendment provide for the implementation of the technical assistance plan.

The Senate recedes.

(c) With slightly different wording, the Senate bill and the House amendment authorize the entering into of grants and contracts.

The Senate recedes.

(d) The Senate bill includes a section requiring agencies to provide technical assistance to covered individuals and entities.

The House amendment makes several technical and conforming changes and adds a requirement that appropriate departments and agencies develop and disseminate technical assistance manuals to those who have rights and responsibilites under the ADA no later than 6 months after ADA regulations are published. However, a covered entity is not excused from complying with the ADA because of any failure to receive technical assistance, including any

failure in the development or dissemination of a technical assistance manual.

The Senate recedes.

76. Wilderness areas

The Senate bill specifies that the National Council on Disability shall conduct a study regarding the effect of wilderness designations on access for people with disabilities.

The House amendment adds that the Wilderness Act is not to be construed as prohibiting use of a wheelchair in a wilderness area by an individual whose disability requires the use of a wheelchair but no modifications of land are required.

The Senate recedes with an amendment.

The new subsection reads:

"(1) IN GENERAL.—Congress reaffirms that nothing in the Wilderness Act shall be construed as prohibiting the use of a wheelchair in a wilderness area by an individual whose disability requires use of a wheelchair, and consistent with the Wilderness Act, no agency shall be required to provide any form of special treatment or accommodation, or to construct any facilities or modify any conditions of lands within a wilderness area to facilitate such use.

"(2) DEFINITION.—For purposes of paragraph (1), the term "wheelchair" means a device designed solely for use by a mobility-impaired person for locomotion, that is suitable for use in an indoor pedestrian area."

Consistent with this section and the Wilderness Act of 1964, the conferees intend that, where appropriate and consistent with the management objectives and maintenance of the wilderness character of the area, the land management agencies charged with the management responsibilities for wilderness areas designated under the authority of the Wilderness Act of 1964 should, when constructing or reconstructing a trail, bridge or facility, comply with the intent of this Act. In cases where the Agencies have delegated or subcontracted their responsibilities, the intent of this section shall apply to the designee or contractor.

77. Congressional coverage

The Senate bill makes the provisions of the legislation applicable to Congress and the instrumentalities of Congress.

The House amendment also covers Congress and the instrumentalities of Congress but delegates to the House and the instrumentalities of Congress the responsibility to develop applicable remedies and procedures.

The House recedes to the Senate on coverage of the Senate with an amendment. The amendment specifies that authorities granted under the ADA to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation shall be exercised by the Senate. The Senate recedes to the House on coverage of the House. The Senate recedes to the House on coverage of instrumentalities of the Congress. The conferees add the following construction clause: "Nothing in this section shall alter the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and regulations promulgated pursuant to that Act."

78. Illegal use of drugs

The Senate bill specifies that an individual with a disability does not include any individual who uses illegal drugs, but may include an individual who has successfully completed a supervised drug rehabilitation program, or has otherwise been rehabilitated successfully, and no longer uses illegal drugs. The Senate bill also makes it clear that an individual who uses illegal drugs may not be denied the benefits of medical services on the basis of his or her use of illegal drugs, if he or she is otherwise entitled to such services.

The House amendment includes clarifying and conforming changes to make this provision consistent with other provisions in the legislation concerning the treatment of users of illegal drugs:

(a) The House amendment specifies that an individual with a disability does not include an individual who is currently engaging in the illegal use of drugs when the covered entity acts on the basis of such use.

The Senate recedes.

The provision excluding an individual who engages in the illegal use of drugs from protection (other than an individual described in section 510(c)) is intended to ensure that covered entities may deny services to or take other actions against persons who illegally use drugs on that basis, without fear of being held liable for discrimination. The provision is not intended to be limited to persons who use drugs on the day of, or within a matter of days or weeks before, the action in question. Rather, the provision is intended to apply to a person whose illegal use of drugs occurred recently enough to justify a reasonable belief that a person's drug use is current.

(b) The House amendment specifies that the following individuals are not excluded from the term "individual with a disability"—an individual who has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use; an individual who is participating in a supervised rehabilitation program and is no longer engaged in such use; or a person who is erroneously regarded as engaging in such use, but is not engaging in such use.

The Senate recedes.

Section 510(b)(2) provides that a person cannot be excluded as a qualified individual with a disability if that individual is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs. This provision does not permit persons to invoke the Act's protection simply by showing that they are participating in a drug treatment program. Rather, refraining from illegal use of drugs also is essential. Covered entities are entitled to seek reasonable assurances that no illegal use of drugs is occurring or has occurred recently enough so that continuing use is a real and ongoing problem. On the other hand, this provision recognizes that many people continue to participate in drug treatment programs long after they have stopped using drugs illegally, and that such persons should be protected under the Act. The conferees intend that the phrase "otherwise been rehabilitated successfully" be interpreted to refer to both inpatient and outpatient programs

that provide professional (not necessarily medical) assistance and counseling.

(c) The House amendment specifies that it shall not be a violation for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual is no longer illegally using drugs; however, nothing in this section shall be construed to encourage, prohibit, restrict, or authorize the conducting of testing for the illegal use of drugs.

The Senate recedes.

(d) The House amendment specifies that an individual shall not be denied health services or other services provided in connection with drug rehabilitation, on the basis of the current illegal use of drugs if the individual is otherwise entitled to such services.

The Senate recedes.

(e) The House amendment includes the same definition of "illegal use of drugs" and "drugs" set out in title I of the Act.

The Senate recedes.

79. Exclusions from the term "disability"

The Senate bill restates current policy under section 504 of the Rehabilitation Act of 1973 that the term "disability" does not include homosexuality and bisexuality. The Senate bill also excludes from the term "disability" the following mental impairments: transvestism, pedophilia, transsexualism, exhibitionism, voyeurism, compulsive gambling, kleptomania, or pyromania, gender identity disorders, current psychoactive substance-induced organic mental disorders (as defined by DSM-III-R which are not the result of medical treatment), or other sexual behavior disorders.

The House amendment lists the various exclusions by category. The first category specifies that homosexuality and bisexuality are not impairments and as such are not disabilities under the ADA. The second category includes transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. The third category compulsive gambling, kleptomania, or pyromania. The final category includes psychoactive substance use disorders resulting from current use of illegal drugs.

The Senate recedes.

80. Amendments to the definition of the term "handicapped individual" under the Rehabilitation Act of 1973

(a) The Senate bill includes amendments to the definition of the term "handicapped individual" used in the Rehabilitation Act of 1973 to exclude current users of illegal drugs which are consistent with the changes made to the definition of the term "individual with a disability" used in the ADA. The Senate bill also specifies that the exclusion does not apply to medical services for which the individual is otherwise entitled. The Senate bill also states that the term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

The House amendment includes the same type of conforming changes to the Rehabilitation Act which are made to the ADA (see

above). However, with respect to the provision that specifies that an individual shall not be excluded from medical services on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services, the category is limited to health services and services provided under titles I, II, and III of the Rehabilitation Act of 1973.

The Senate recedes.

The conferees incorporate by reference the statement of intent set out in item 16. Conferees note that, for purposes of this title, an individual covered by Executive Order 12564 who tests positive on an employment related drug test conducted and verified in conformity with applicable federal regulations or guidelines is deemed to be "currently engaging in the illegal use of drugs" and may not invoke the Act's protection, except as provided in section 7(8)(C)(ii)(III) of the Rehabilitation Act. The conferees do not intend to prevent individuals covered by Executive Order 12564 or any other individuals covered by the employment provisions of the Act from challenging a positive drug test result by invoking the protection of section 7(8)(C)(ii)(III). The Rehabilitation Act itself does not provide any standard by which the accuracy or validity of a drug test result is to be determined. Conferees also recognize that current Department of Transportation regulations allow or require, depending on the circumstances, employers to remove individuals in safety sensitive positions who are undergoing drug rehabilitation from such positions. With respect to individuals illegally using drugs or impaired by alcohol, nothing in this Act is intended to affect federal laws or Department of Transportation regulations to protect public safety.

(b) The House amendment specifies that the term "drugs" and the phrase "current illegal use of drugs" have the same meanings as such terms have under the ADA.

The Senate recedes.

81. Alternative means of dispute resolutions

The House amendment, but not the Senate bill, provides that where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the ADA.

The Senate recedes.

It is the intent of the conferees that the use of these alternative dispute resolution procedures is completely voluntary. Under no condition would an arbitration clause in a collective bargaining agreement or employment contract prevent an individual from pursuing their rights under the ADA. The conferees adopt by reference the statement of the House Judiciary Report regarding this provision.

From the Committee on Education and Labor, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

AUGUSTUS F. HAWKINS,
MAJOR R. OWENS,

MATTHEW G. MARTINEZ,
STEVE BARTLETT,
HARRIS W. FAWELL,

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference, except that for consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, Mr. Rinaldo is appointed in lieu of Mr. Whittaker:

JOHN D. DINGELL,
EDWARD J. MARKEY,
THOMAS A. LUKEN,
NORMAN F. LENT,
BOB WHITTAKER,

For consideration of title IV of the Senate bill, and title IV of the House amendment, and modifications committed to conference, in lieu of Mr. Whittaker:

MATT RINALDO,

From the Committee on Public Works and Transportation, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

GLENN M. ANDERSON,
ROBERT A. ROE,
NORMAN Y. MINETA,
JOHN PAUL HAMMERSCHMIDT,

From the Committee on Judiciary, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JACK BROOKS,
DON EDWARDS,
BOB KASTENMEIER,
HAMILTON FISH, Jr.,
F. JAMES SENSENBRENNER, Jr.
(agrees to the conference report with the exception of "Item 13. Health and Safety" (Sec. 103(d))),

As an additional conferee, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

STENY H. HOYER,
Managers on the Part of the House.

EDWARD M. KENNEDY,
TOM HARKIN,
HOWARD M. METZENBAUM,
PAUL SIMON,
ORRIN HATCH,
DAVE DURENBERGER,
JAMES M. JEFFORDS,

From the Committee on Commerce, Science, and Transportation, solely for the consideration of issues within that Committee's jurisdiction (telecommunications, commuter transit, and drug testing of transportation employees):

FRITZ HOLLINGS,
DANIEL K. INOUYE,
JOHN C. DANFORTH,
Managers on the Part of the Senate.

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